

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

D. Craig Brown, Circuit Court Judge

Case No. 2013-002474

RECEIVED

MAY 22 2014

SC Court of Appeals

Catherine Virginia Cox,

Appellant.

vs.

Kenneth L. Pinckney, Sr. and Stacy Marie St. Pierre,

Respondents.

RECORD ON APPEAL

Kimberly L. Smith, Esquire
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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

D. Craig Brown, Circuit Court Judge

Civil Action No.: 2012-CP-07-3182

Catherine Virginia Cox,

Appellant,

v.

Kenneth L. Pinckney, Sr.,
And Stacy Marie St. Pierre,

Respondent.

NOTICE OF APPEAL

The Appellant, Catherine Virginia Cox, appeals the Order Granting Defendant St. Pierre's Motion for Summary Judgment on October 4, 2013, and the Order Denying Plaintiff's Motion for Reconsideration in this case. This Order Denying Plaintiff's Motion for Reconsideration was imposed by the Honorable D. Craig Brown, on October 23, 2013, and received by Counsel on October 30, 2013.

MOSS, KUHN & FLEMING, P.A.



Kimberly L. Smith
Post Office Drawer 507
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(843) 524-3373
Attorney for Appellant

November 13, 2013

Counsel of Record:
Adam J. Neil
Post Office Box 6648
Columbia, South Carolina 29260
Attorney for Respondent

000001

2013 NOV 13 PM 3:53

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NOV 19 2013

SC Court of Appeals

CERTIFICATE OF SERVICE

Undersigned certifies that the Notice of Appeal, to which this certificate is affixed, was served upon the party (s) to this action by hand delivery or by depositing a copy of same, enclosed in a first class, postpaid wrapper properly addressed to the attorney(s) of record.

Adam J. Neil, Esquire
Post Office Box 6648
Columbia, South Carolina 29260

NOV 13 PM 3:53
CLERK OF COURT
SOUTH CAROLINA
COLUMBIA, SC

in a post office or official depository under the exclusive care and custody of the United States Postal Service, on November 13, 2013.

MOSS, KUHN & FLEMING, P.A.

Charlotte Berkeley

Charlotte Berkeley
Post Office Drawer 507
Beaufort, South Carolina 29901
843-524-3373/ Fax: 843-524-1302

RECEIVED

NOV 19 2013

SC Court of Appeals

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STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)
)
CATHERINE VIRGINIA COX,)
)
-vs-)
)
KENNETH L. PINCKNEY, SR.,)
AND STACY MARIE ST. PIERRE)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO: 2012-CP-07-3182

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

13 OCT 25 PM 4:11
BEAUFORT COUNTY S.C.
CLERK OF COURT

RECEIVED

NOV 19 2013

SC Court of Appeals

Currently before the Court is Plaintiff Catherine Virginia Cox's ("Plaintiff") Motion to Reconsider pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure. Plaintiff requests the Court to reconsider its Order granting Defendant Stacy St. Pierre's ("St. Pierre") motion for summary judgment, which was entered on October 4, 2013.

This action arises from an automobile accident on July 11, 2012, involving the Plaintiff and the Defendant Pinckney. At the time of the accident, Defendant Pinckney was operating a vehicle owned by Defendant Stacy Marie St. Pierre. The Plaintiff brought an action against Defendant St. Pierre for negligent entrustment.

Defendant St. Pierre moved for summary judgment, arguing that South Carolina limits a negligent entrustment cause of action to situations involving an owner's entrustment of a motor vehicle to an intoxicated driver. This summary judgment motion was heard by the Court on September 30, 2013 in Beaufort County, South Carolina. After hearing both parties' arguments and reviewing the applicable South Carolina law, this Court found no evidence that Defendant Pinckney was intoxicated and therefore, granted Defendant St. Pierre's motion for summary judgment. The Court signed an order to this effect on October 4, 2013.


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After reviewing the Plaintiff's motion and thoroughly considering all submissions and arguments by both parties previously presented in support of their positions, I respectfully decline to change the Order entered by the Court on October 4, 2013.

Accordingly, and based upon the foregoing, it is therefore ORDERED, ADJUDGED AND DECREED that the Plaintiff's Motion for Reconsideration is DENIED.

IT IS SO ORDERED!

October 23, 2013
Florence, South Carolina


The Honorable D. Craig Brown

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RECEIVED

NOV 19 2013

SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF BEAUFORT

CIVIL ACTION NO: 2012-CP-07-03182

Catherine Virginia Cox

13 OCT -9 PM 3:49
CLARENCE J. JOSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

Plaintiff,

vs.

ORDER GRANTING STACY MARIE ST. PIERRE'S MOTION FOR SUMMARY JUDGMENT

Kenneth L. Pinckney, Sr. and Stacy Marie St. Pierre,

Defendants.

This matter came before the Court for a hearing on Defendant Stacy Marie St. Pierre's motion for summary judgment on Monday, September 30, 2013 at the Beaufort County Courthouse. Present at the hearing were Kimberly Smith, Esquire of Moss, Kuhn and Fleming for the Plaintiff and Adam Neil, Esquire of Murphy and Grantland for Defendant St. Pierre. After reviewing the submissions of parties, hearing the arguments of counsel and considering the law of this state, the Court grants St. Pierre's motion for summary judgment.

This action arises out of a motor vehicle accident that occurred on July 11, 2012 when a vehicle operated by Kenneth Pinckney collided with a vehicle operated by Plaintiff Catherine Cox. Stacy Marie St. Pierre owned the vehicle driven by Pinckney and Plaintiff has alleged a cause of action against her for negligent entrustment. There is no evidence in the record that Pinkney was under the influence of any intoxicants at the time of the accident or that St. Pierre had any reason to know that Pinkney had a propensity to drive while intoxicated. Counsel for the plaintiff conceded at the hearing that Plaintiff had no such evidence. In fact, in response to Requests to Admit served upon her by counsel for St. Pierre, Plaintiff only asserts that Pinckney was operating his vehicle without a license or under a suspended license. There is likewise no

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evidence that Pinckney was addicted to intoxicants, that St. Pierre had any knowledge of prior drug use by Pinckney or that Pinckney had a propensity to operate a vehicle while intoxicated.

On several occasions our Supreme Court has instructed that the elements of negligent entrustment are:

(1) knowledge of or knowledge imputable to the owner that the driver was either addicted to intoxicants or had the habit of drinking; (2) the owner knew or had imputable knowledge that the driver was likely to drive while intoxicated; and (3) under these circumstances, the entrustment of a vehicle by the owner to such a driver.

Gadson ex rel. Gadson v. ECO Services of South Carolina, Inc., 374 S.C. 171, 648 S.E.2d 585 (2007) (citing *Jackson v. Price*, 288 S.C. 377, 342 S.E.2d 628 (Ct. App. 1986)).

On two occasions, the Supreme Court has reversed the Court of Appeals, which adopted a broader view of negligent entrustment, which is found in The Restatement (Second) of Torts §§ 308 and 390 (1965). The Restatement's definition of negligent entrustment encompasses not only intoxicated drivers, but drivers who, due to their "youth, inexperience, or otherwise" are likely to use the vehicle in a manner involving unreasonable risk of harm to themselves or others. See *Lydia v. Horton*, 343 S.C. 376, 383-85, 540 S.E.2d 102, 106-07 (Ct. App. 2000), *reversed*, 355 S.C. 36, 583 S.E.2d 750 (2003); *Gadson ex rel. Gadson v. ECO Services of South Carolina, Inc.*, Op. No. 2005-UP-130, n.4 (S.C. Ct. App. Feb. 18, 2005), *reversed*, 374 S.C. 171, 648 S.E.2d 585 (2007). In both cases, the Supreme Court reversed the Court of Appeals and expressly declined to adopt sections 308 and 390. *Lydia*, 355 S.C. at 40, n.2, 583 S.E.2d at 753 ("[W]e decline to adopt the Comment or sections 308 and 390 of the Restatement based on these facts presented."); *Gadson*, 374 S.C. at 177, 648 S.E.2d at 588 ("We decline to adopt sections 308 and 390 of the Restatement based on this set of facts, and we analyze this case under the elements of negligent entrustment set forth in *Jackson*.")


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Plaintiff bears the burden of proving each element of her cause of action. The evidence presented was all considered in the light most favorable to the Plaintiff. However, the court was not presented with any evidence that indicating that Pinckney was intoxicated on the night of the accident, that Pinckney was addicted to intoxicants, that St. Pierre knew that Pinckney was addicted to intoxicants, or that St. Pierre knew that Pinckney was likely to drive a vehicle while intoxicated. Because Plaintiff bears the burden at the summary judgment stage of producing some evidence to support these necessary elements and she has failed to do so, St. Pierre is entitled to judgment as a matter of law that she did not negligently entrust the vehicle to Pinckney.

For the foregoing reasons, Defendant St. Pierre's motion for summary judgment is hereby **GRANTED.**

IT IS SO ORDERED.

Dehly, 2013
Florence, South Carolina


The Hon. D. Craig Brown, Presiding Judge
Fourteenth Judicial Circuit

Dehly 3-13
000007

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFURTO

Catherine Virginia Cox,

Plaintiff,

vs.

Kenneth L. Pinckney, Sr. and Stacy Marie St.
Pierre,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO: 2012-CP-07-03182

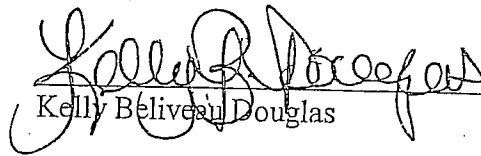
CERTIFICATE OF SERVICE

13 OCT 09 PM 3:19
CLERK OF COURT
COURT HOUSE
BEAUFORT, SOUTH CAROLINA

I, the undersigned employee of the law offices of Murphy & Grantland, P.A., Attorneys for Defendant, Stacy Marie St. Pierre, do hereby certify that I have served a copy of the foregoing, Order Granting Stacy Marie St. Pierre's Motion for Summary Judgment, in connection with the above-referenced case by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

James H. Moss, Esquire
Moss, Kuhn & Fleming, P.A.
Post Office Drawer 507
Beaufort, SC 29901-0507

Columbia, South Carolina
October 7, 2013


Kelly Beliveau Douglas

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STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)
)
CATHERINE VIRGINIA COX,)
)
-vs-)
)
KENNETH L. PINCKNEY, SR.,)
AND STACY MARIE ST. PIERRE)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO: 2012-CP-07-3182

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

13 OCT 25 PM 6:11
BEAUFORT COUNTY S.C.
CLERK OF COURT

Currently before the Court is Plaintiff Catherine Virginia Cox's ("Plaintiff") Motion to Reconsider pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure. Plaintiff requests the Court to reconsider its Order granting Defendant Stacy St. Pierre's ("St. Pierre") motion for summary judgment, which was entered on October 4, 2013.

This action arises from an automobile accident on July 11, 2012, involving the Plaintiff and the Defendant Pinckney. At the time of the accident, Defendant Pinckney was operating a vehicle owned by Defendant Stacy Marie St. Pierre. The Plaintiff brought an action against Defendant St. Pierre for negligent entrustment.

Defendant St. Pierre moved for summary judgment, arguing that South Carolina limits a negligent entrustment cause of action to situations involving an owner's entrustment of a motor vehicle to an intoxicated driver. This summary judgment motion was heard by the Court on September 30, 2013 in Beaufort County, South Carolina. After hearing both parties' arguments and reviewing the applicable South Carolina law, this Court found no evidence that Defendant Pinckney was intoxicated and therefore, granted Defendant St. Pierre's motion for summary judgment. The Court signed an order to this effect on October 4, 2013.


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After reviewing the Plaintiff's motion and thoroughly considering all submissions and arguments by both parties previously presented in support of their positions, I respectfully decline to change the Order entered by the Court on October 4, 2013.

Accordingly, and based upon the foregoing, it is therefore ORDERED, ADJUDGED AND DECREED that the Plaintiff's Motion for Reconsideration is **DENIED**.

IT IS SO ORDERED!

October 23, 2013
Florence, South Carolina


The Honorable D. Craig Brown

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STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF BEAUFORT 13 OCT -9 PM 3:49 CIVIL ACTION NO: 2012-CP-07-03182

Catherine Virginia Cox,

CLERK OF COURT
BEAUFORT COUNTY, S.C.
Plaintiff,

vs.

**ORDER GRANTING STACY MARIE ST.
PIERRE'S MOTION FOR SUMMARY
JUDGMENT**

Kenneth L. Pinckney, Sr. and Stacy Marie St.
Pierre,

Defendants.

This matter came before the Court for a hearing on Defendant Stacy Marie St. Pierre's motion for summary judgment on Monday, September 30, 2013 at the Beaufort County Courthouse. Present at the hearing were Kimberly Smith, Esquire of Moss, Kuhn and Fleming for the Plaintiff and Adam Neil, Esquire of Murphy and Grantland for Defendant St. Pierre. After reviewing the submissions of parties, hearing the arguments of counsel and considering the law of this state, the Court grants St. Pierre's motion for summary judgment.

This action arises out of a motor vehicle accident that occurred on July 11, 2012 when a vehicle operated by Kenneth Pinckney collided with a vehicle operated by Plaintiff Catherine Cox. Stacy Marie St. Pierre owned the vehicle driven by Pinckney and Plaintiff has alleged a cause of action against her for negligent entrustment. There is no evidence in the record that Pinkney was under the influence of any intoxicants at the time of the accident or that St. Pierre had any reason to know that Pinkney had a propensity to drive while intoxicated. Counsel for the plaintiff conceded at the hearing that Plaintiff had no such evidence. In fact, in response to Requests to Admit served upon her by counsel for St. Pierre, Plaintiff only asserts that Pinckney was operating his vehicle without a license or under a suspended license. There is likewise no

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evidence that Pinckney was addicted to intoxicants, that St. Pierre had any knowledge of prior drug use by Pinckney or that Pinckney had a propensity to operate a vehicle while intoxicated.

On several occasions our Supreme Court has instructed that the elements of negligent entrustment are:

(1) knowledge of or knowledge imputable to the owner that the driver was either addicted to intoxicants or had the habit of drinking; (2) the owner knew or had imputable knowledge that the driver was likely to drive while intoxicated; and (3) under these circumstances, the entrustment of a vehicle by the owner to such a driver.

Gadson ex rel. Gadson v. ECO Services of South Carolina, Inc., 374 S.C. 171, 648 S.E.2d 585 (2007) (citing *Jackson v. Price*, 288 S.C. 377, 342 S.E.2d 628 (Ct. App. 1986)).

On two occasions, the Supreme Court has reversed the Court of Appeals, which adopted a broader view of negligent entrustment, which is found in The Restatement (Second) of Torts §§ 308 and 390 (1965). The Restatement's definition of negligent entrustment encompasses not only intoxicated drivers, but drivers who, due to their "youth, inexperience, or otherwise" are likely to use the vehicle in a manner involving unreasonable risk of harm to themselves or others. See *Lydia v. Horton*, 343 S.C. 376, 383-85, 540 S.E.2d 102, 106-07 (Ct. App. 2000), *reversed*, 355 S.C. 36, 583 S.E.2d 750 (2003); *Gadson ex rel. Gadson v. ECO Services of South Carolina, Inc.*, Op. No. 2005-UP-130, n.4 (S.C. Ct. App. Feb. 18, 2005), *reversed*, 374 S.C. 171, 648 S.E.2d 585 (2007). In both cases, the Supreme Court reversed the Court of Appeals and expressly declined to adopt sections 308 and 390. *Lydia*, 355 S.C. at 40, n.2, 583 S.E.2d at 753 ("[W]e decline to adopt the Comment or sections 308 and 390 of the Restatement based on these facts presented."); *Gadson*, 374 S.C. at 177, 648 S.E.2d at 588 ("We decline to adopt sections 308 and 390 of the Restatement based on this set of facts, and we analyze this case under the elements of negligent entrustment set forth in *Jackson*.")


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Plaintiff bears the burden of proving each element of her cause of action. The evidence presented was all considered in the light most favorable to the Plaintiff. However, the court was not presented with any evidence that indicating that Pinckney was intoxicated on the night of the accident, that Pinckney was addicted to intoxicants, that St. Pierre knew that Pinckney was addicted to intoxicants, or that St. Pierre knew that Pinckney was likely to drive a vehicle while intoxicated. Because Plaintiff bears the burden at the summary judgment stage of producing some evidence to support these necessary elements and she has failed to do so, St. Pierre is entitled to judgment as a matter of law that she did not negligently entrust the vehicle to Pinckney.

For the foregoing reasons, Defendant St. Pierre's motion for summary judgment is hereby **GRANTED.**

IT IS SO ORDERED.

Oct 4, 2013
Florence, South Carolina


The Hon. D. Craig Brown, Presiding Judge
Fourteenth Judicial Circuit

D's P. 3-13

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF BEAUFURTO

CIVIL ACTION NO: 2012-CP-07-03182

Catherine Virginia Cox,

Plaintiff,

vs.

Kenneth L. Pinckney, Sr. and Stacy Marie St.
Pierre,

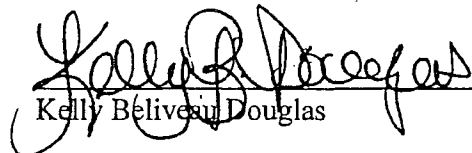
Defendants.

CERTIFICATE OF SERVICE

OCT-9 PM 3:49
CLERK OF COURT
BEAUFORT COUNTY, S.C.

I, the undersigned employee of the law offices of Murphy & Grantland, P.A., Attorneys for Defendant, Stacy Marie St. Pierre, do hereby certify that I have served a copy of the foregoing, Order Granting Stacy Marie St. Pierre's Motion for Summary Judgment, in connection with the above-referenced case by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

James H. Moss, Esquire
Moss, Kuhn & Fleming, P.A.
Post Office Drawer 507
Beaufort, SC 29901-0507


Kelly Beliveau Douglas

Columbia, South Carolina
October 7, 2013

000014

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BEAUFORT)
)
 Catherine Virginia Cox)
) Plaintiff,)
)
 vs.)
)
 Kenneth L. Pinckney, Sr. and Stacy Marie St.)
) Pierre,)
) Defendant.)

IN THE COURT OF COMMON PLEAS
 FOURTEENTH JUDICIAL CIRCUIT
 CASE NO.: 2012-CP-07-03182

**MOTION AND ORDER INFORMATION
 FORM AND COVERSHEET**

2013 OCT 16 PM 9:09
 CLERK OF COURT
 BEAUFORT COUNTY
 SOUTH CAROLINA

Plaintiff's Attorney: Kimberly L. Smith, Bar No. 7464 Address: P.O. Drawer 507 Beaufort, SC 29901 Phone: 843-524-3373 Fax 843-524-1302 E-mail: ksmith@mossandkuhn.com Other: _____	Defendant's Attorney: Adam J. Neil, Bar No. _____ Address: 4406-B Forest Drive Columbia, SC 29206 Phone: 803-782-4100 Fax 803-782-4114 E-mail: aneil@murphygrantland.com Other: _____
---	--

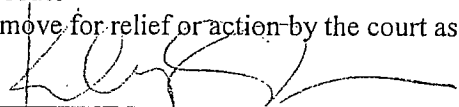
MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
 FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
 PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion to Reconsider
 Estimated Time Needed: 15 min Court Reporter Needed: YES / NO

SECTION II: Motion/Order Type

Written motion attached
 Form Motion/Order
 I hereby move for relief or action by the court as set forth in the attached proposed order.


 Signature of Attorney for Plaintiff / Defendant Date submitted _____

SECTION III: Motion Fee

PAID - AMOUNT: \$ _____
 EXEMPT: (check reason)

Rule to Show Cause in Child or Spousal Support
 Domestic Abuse or Abuse and Neglect
 Indigent Status State Agency v. Indigent Party
 Sexually Violent Predator Act Post-Conviction Relief
 Motion for Stay in Bankruptcy
 Motion for Publication Motion for Execution (Rule 69, SCRPC)
 Proposed order submitted at request of the court; or,
 reduced to writing from motion made in open court per judge's instructions
 Name of Court Reporter: _____
 Other: _____

JUDGE'S SECTION <input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	JUDGE CODE _____ Date: _____
--	---------------------------------

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____
 MOTION FEE COLLECTED: \$ _____
 CONTESTED - AMOUNT DUE: \$ _____

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BEAUFORT)
)
 CATHERINE VIRGINIA COX,)
)
 Plaintiff,)
 vs.)
)
 KENNETH L. PINCKNEY, SR.)
 AND STACY MARIE ST. PIERRE,)
)
 Defendants.)
 _____)

IN THE COURT OF COMMON PLEAS
 CIVIL ACTION NO: 2012-CP-07-3182

MOTION TO RECONSIDER ORDER
 GRANTING DEFENDANT ST. PIERRE'S
 MOTION FOR SUMMARY JUDGMENT

2013 OCT 16 PM 3:59
 JUDGE ANN ROSENBAUM
 BEAUFORT COUNTY S.C.
 CLERK OF COURT

YOU WILL PLEASE TAKE NOTICE that the Plaintiff, by and through the undersigned counsel, will move, on the 10th day after service or as soon thereafter as counsel may be heard, before the Honorable D. Craig Brown, Presiding Judge of the Court of Common Pleas for the Fourteenth Judicial Circuit, Beaufort County, to reconsider the Court's Order of October 4, 2013, granting Defendant Stacy Marie St. Pierre's Motion for Summary Judgment, pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure.

This action arises from an automobile accident on July 11, 2012, involving the Plaintiff and the Defendant Pinckney. Defendant Pinckney was operating Defendant St. Pierre's vehicle at the time of the collision that caused severe injury to the Plaintiff. Defendant Pinckney did not have a driver's license at the time of the accident and Defendant St. Pierre admitted that she knew that the Defendant Pinckney's license was suspended when she entrusted him with her vehicle on the day of the accident. In fact, Defendant St. Pierre stated in her recorded statement to the insurance company that she gave permission to Defendant Pinckney to drive her vehicle even though she knew that

he did not have an active driver's license as it was suspended for numerous traffic violations and infractions. As a result, Plaintiff alleged a cause of action for negligent entrustment against Defendant St. Pierre.

The Court erred in granting Summary Judgment as to Plaintiff's claim for negligent entrustment as to Defendant St. Pierre. Defendant St. Pierre moved for summary judgment on the basis that South Carolina limits the cause of action for negligent entrustment to situations involving an owner's entrustment of a motor vehicle to an intoxicated driver and therefore, Plaintiff has no basis for her negligent entrustment claim as to Defendant St. Pierre. To assert this contention and for the Court to adopt this position as the basis for its ruling would completely disregard the existence of Sections 308 and 390 of the Restatement (Second) of Torts.

Sections 308 of the Restatement (Second) of Torts provides:

It is negligence to permit a third person to use a thing or to engage in an activity which is under the control of the actor, if the actor knows or should know that such person intends or is likely to use the thing or to conduct himself in the activity in such a manner as to create an unreasonable risk of harm to others.

Restatement (Second) of Torts §308 (1965).

Sections 390 of the Restatement (Second) of Torts provides:

“One who supplies directly or through a third person a chattel for the use of another whom the supplier knows or has reason to know to be likely because of his youth, inexperience, or otherwise, to use it in a manner involving unreasonable risk of physical harm to himself and others whom

the supplier should expect to share in or be endangered by its use, is subject to liability for physical harm resulting to them.”

Restatement (Second) of Torts §390 (1965).

While the majority of recent cases dealing with negligent entrustment have dealt with accidents involving intoxicated drivers, the cause of action for negligent entrustment still exists in cases not involving intoxicated drivers and those aforementioned cases do not bar the negligent entrustment cause of action established under Restatement 308 and 390 and eliminate negligent entrustment actions involving vehicles in other contexts.

In *American Mutual Fire Insurance Company v. Passmore*, the South Carolina Supreme Court stated that “the theory of negligent entrustment provides: the owner or one in control of the vehicle and responsible for its use who is negligent in entrusting it to another can be held liable for such negligent entrustment.” 275 S.C. 618, 274 S.E.2d 416, 418 (S.C. 1981). The next negligent entrustment case was *McAllister v. Graham*, 287 S.C. 455, 339 S.E.2d 154 (Ct. App. 1986). The Court of Appeals in *McAllister* cited *Passmore* and set forth a narrower standard for determining liability for negligent entrustment of a vehicle **in cases where the party in control of the vehicle entrusts it to an intoxicated individual**. The Court set forth the following elements for a negligent entrustment cause of action under the circumstances in that case: (1) knowledge of or knowledge imputable to the owner that the driver was either addicted to intoxicants or had the habit of drinking; (2) that the owner knew or had imputable knowledge that the driver was likely to drive while intoxicated; and (3) under these circumstances, the entrustment of a vehicle by the owner to such a driver. *Id.* at 156. This ruling is the

current test for negligent entrustment cases **involving use of an automobile by an intoxicated driver.**

In 2007, the South Carolina Supreme Court, under the criteria in *McAllister*, held in *Gadson v. ECO Services of South Carolina, Inc.*, that “according to our case law, the elements of negligent entrustment are: (1) the knowledge of or knowledge imputable to the owner that the driver was either addicted to intoxicants or had the habit of drinking; (2) the owner knew or had imputable knowledge that the driver was likely to drive while intoxicated; and (3) under these circumstances, the entrustment of a vehicle by the owner to such a driver. 374 S.C. 171, 648 S.E.2d 585, 588 (S.C. 2007). The Court again declined to adopt sections 308 and 390 of the Restatement in automobile accident cases involving negligent entrustment and alcohol intoxication.

Based on the ruling in *Gadson*, numerous Defendants, as Defendant St. Pierre, have taken the position that the Supreme Court overruled the test set forth in *Passmore*. In *Becker v. Estes Exp. Lines, Inc.*, the Defendant asserted the position that *Gadson* overruled *Passmore* and as a result concluded that South Carolina only recognized a negligent entrustment cause of action in situations involving an intoxicated driver. *Becker v. Estes Express Lines, Inc.*, 2008 WL 701388. However, the Court in *Becker* did not agree with the Defendant and held “that the South Carolina Supreme Court did not overrule the definition of negligent entrustment found in *Passmore* in its entirety.” Judge Herlong in *Becker* goes on to distinguish *Gadson* from the case before them:

“Significantly, the negligent entrustment claim in *Gadson* was based on allegations that the driver of the vehicle was intoxicated when the accident occurred. Therefore, the South Carolina Supreme Court has never

determined whether the negligent entrustment factors set forth in *Gadson* limit the claim in South Carolina to situations only involving an intoxicated driver. Further, there is no evidence in *Gadson* that the court intended to create such a limitation. In fact, the court explicitly stated in the opinion that it declined to adopt the broader definition of negligent entrustment set forth in the Restatement “**based on this set of facts.**” *Gadson*, 648 S.E.2d at 588.....As stated above, the facts the South Carolina Supreme Court refers to in *Gadson* involved allegations of entrustment to an intoxicated driver. *Id.* at 587. Therefore, the court concludes that the South Carolina Supreme Court appears to limit its holding to the set of facts involved in the *Gadson* case, namely those involving allegations of an intoxicated driver.”

The court in *Becker*, denied the Defendant’s motion for summary judgment as they declined to find that South Carolina had limited negligent entrustment claims to those situations solely involving an owner’s entrustment of a motor vehicle to an intoxicated driver. The Court further states in its holding that “the South Carolina Supreme Court has never explicitly held that the *Gadson* elements must apply in every negligent entrustment case, effectively limiting the claim to situations involving allegation of an intoxicated driver.”

In 2009, the Court of Appeals held in *Jones ex rel. Jones v. Enterprise Leasing Company-Southeast*, that “[w]hile case law in our state has tended towards the tort of negligent entrustment that compromises an element of drinking, sections 308 and 390 of the Restatement (Second) of Torts (1965), involve the application of negligent

entrustment to situations that do not involve the presence of alcohol.” The Court differentiates the case in *Jones* from the previous holdings in *Lydia* and *Gadson* by holding that “[h]ere, unlike in *Lydia* or *Gadson*, where a negligent entrustment claim could be decided under the elements established in *McAlister*, there is no suggestion that alcohol played any role in this accident.” *Id.* at 823. The Court ultimately granted summary judgment on the basis that Jones could not prove the compulsory element of ownership or control of the vehicle and therefore, it was not necessary to adopt sections 308 and 390 for purposes of that appeal.

If the Court adopts the Defendant’s interpretation of the law there could be serious ramifications for the doctrine of negligent entrustment in the future. By doing so, the Court is ignoring the general principle of the many negligent entrustment cases prior to *Gadson* as well as South Carolina precedent under the Restatement and *Passmore*, that the right to control imposes a duty to use due care in the exercise of that control. The public policy implications of such a narrow standard would essentially absolve individuals of accountability in properly exercising that duty to use due care so as to prevent harm to others. Clearly, this is not what the Supreme Court intended when narrowing the standard for negligent entrustment as to intoxicated drivers in *Gadson*.

Judge Anderson’s Request to Charge – Civil, § 28-10, states:

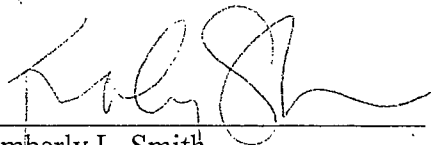
“The owner or one in control of a vehicle and responsible for its use who is negligent in entrusting it to another can be held liable for such negligent entrustment. The theory of negligent entrustment is based on the negligence of the entrustor. If a person entrusts a dangerous instrumentality to a person knowing of that person’s lack of competency

in respect to the instrumentality, the entrustor assumes responsibility for injury caused a third person through the unskillful operation of the instrumentality by the trustee.”

SC-JICIV 28-10, Anderson, S.C. Requests to Charge – Civil, §28-10 (2009).

To assert, as the Defendant has, that the Supreme Court intended to eliminate the cause of action set forth above by Judge Anderson flies in the face of reason and public policy in South Carolina.

For the aforementioned reasons, the Plaintiff respectfully requests the Court to Reconsider its Order Granting Defendant’s Motion for Summary Judgment.



Kimberly L. Smith
MOSS, KUHN & FLEMING, P.A.
Post Office Drawer 507
1501 North Street
Beaufort, South Carolina 29901-0507
Telephone: 843-524-3373
Facsimile: (843) 524-1302

October 15, 2013
Beaufort, South Carolina

000022

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF BEAUFORT

CIVIL ACTION NO: 2012-CP-07-03182

Catherine Virginia Cox,

Plaintiff,

vs.

ORDER GRANTING STACY MARIE ST. PIERRE'S MOTION FOR SUMMARY JUDGMENT

Kenneth L. Pinckney, Sr. and Stacy Marie St. Pierre,

Defendants.

2013 OCT 16 PM 3:59
BEAUFORT COUNTY S.C.
CLERK OF COURT

This matter came before the Court for a hearing on Defendant Stacy Marie St. Pierre's motion for summary judgment on Monday, September 30, 2013 at the Beaufort County Courthouse. Present at the hearing were Kimberly Smith, Esquire of Moss, Kuhn and Fleming for the Plaintiff and Adam Neil, Esquire of Murphy and Grantland for Defendant St. Pierre. After reviewing the submissions of parties, hearing the arguments of counsel and considering the law of this state, the Court grants St. Pierre's motion for summary judgment.

This action arises out of a motor vehicle accident that occurred on July 11, 2012 when a vehicle operated by Kenneth Pinckney collided with a vehicle operated by Plaintiff Catherine Cox. Stacy Marie St. Pierre owned the vehicle driven by Pinckney and Plaintiff has alleged a cause of action against her for negligent entrustment. There is no evidence in the record that Pinkney was under the influence of any intoxicants at the time of the accident or that St. Pierre had any reason to know that Pinkney had a propensity to drive while intoxicated. Counsel for the plaintiff conceded at the hearing that Plaintiff had no such evidence. In fact, in response to Requests to Admit served upon her by counsel for St. Pierre, Plaintiff only asserts that Pinckney was operating his vehicle without a license or under a suspended license. There is likewise no

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P. 10/3

evidence that Pinckney was addicted to intoxicants, that St. Pierre had any knowledge of prior drug use by Pinckney or that Pinckney had a propensity to operate a vehicle while intoxicated.

On several occasions our Supreme Court has instructed that the elements of negligent entrustment are:

(1) knowledge of or knowledge imputable to the owner that the driver was either addicted to intoxicants or had the habit of drinking; (2) the owner knew or had imputable knowledge that the driver was likely to drive while intoxicated; and (3) under these circumstances, the entrustment of a vehicle by the owner to such a driver.

Gadson ex rel. Gadson v. ECO Services of South Carolina, Inc., 374 S.C. 171, 648 S.E.2d 585 (2007) (citing *Jackson v. Price*, 288 S.C. 377, 342 S.E.2d 628 (Ct. App. 1986)).

On two occasions, the Supreme Court has reversed the Court of Appeals, which adopted a broader view of negligent entrustment, which is found in The Restatement (Second) of Torts §§ 308 and 390 (1965). The Restatement's definition of negligent entrustment encompasses not only intoxicated drivers, but drivers who, due to their "youth, inexperience, or otherwise" are likely to use the vehicle in a manner involving unreasonable risk of harm to themselves or others. See *Lydia v. Horton*, 343 S.C. 376, 383-85, 540 S.E.2d 102, 106-07 (Ct. App. 2000), *reversed*, 355 S.C. 36, 583 S.E.2d 750 (2003); *Gadson ex rel. Gadson v. ECO Services of South Carolina, Inc.*, Op. No. 2005-UP-130, n.4 (S.C. Ct. App. Feb. 18, 2005), *reversed*, 374 S.C. 171, 648 S.E.2d 585 (2007). In both cases, the Supreme Court reversed the Court of Appeals and expressly declined to adopt sections 308 and 390. *Lydia*, 355 S.C. at 40, n.2, 583 S.E.2d at 753 ("[W]e decline to adopt the Comment or sections 308 and 390 of the Restatement based on these facts presented."); *Gadson*, 374 S.C. at 177, 648 S.E.2d at 588 ("We decline to adopt sections 308 and 390 of the Restatement based on this set of facts, and we analyze this case under the elements of negligent entrustment set forth in *Jackson*.")

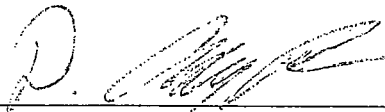
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P
2013

Plaintiff bears the burden of proving each element of her cause of action. The evidence presented was all considered in the light most favorable to the Plaintiff. However, the court was not presented with any evidence that indicating that Pinckney was intoxicated on the night of the accident, that Pinckney was addicted to intoxicants, that St. Pierre knew that Pinckney was addicted to intoxicants, or that St. Pierre knew that Pinckney was likely to drive a vehicle while intoxicated. Because Plaintiff bears the burden at the summary judgment stage of producing some evidence to support these necessary elements and she has failed to do so, St. Pierre is entitled to judgment as a matter of law that she did not negligently entrust the vehicle to Pinckney.

For the foregoing reasons, Defendant St. Pierre's motion for summary judgment is hereby **GRANTED.**

IT IS SO ORDERED.

Oct 4, 2013
Florence, South Carolina



The Hon. D. Craig Brown, Presiding Judge
Fourteenth Judicial Circuit

Oct 4 2013
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STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Catherine Virginia Cox,
 Plaintiff

v.

Kenneth L. Pinckney, Sr. and Stacy Marie St. Pierre,
 Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO.
2012-CP-07-03182

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:
James H. Moss, Esquire
Moss, Kuhn & Fleming, P.A.
Post Office Drawer 507
Beaufort, SC 29901-0507
843-524-3373

Defendant's Attorney:
Adam J. Neil, Esquire
Post Office Box 6648
Columbia, SC 29260
803-782-4100

- MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
- FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
- PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

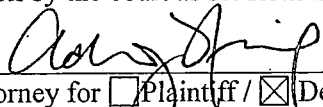
SECTION I: Hearing Information

Nature of Motion: Motion for Summary Judgment
Estimated Time Needed: 30 minutes Court Reporter Needed: YES / NO

SECTION II: Motion/Order Type

- Written motion attached
- Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.


Signature of Attorney for Plaintiff / Defendant January 29, 2013 Date submitted

SECTION III: Motion Fee

- PAID - AMOUNT: 25.00
- EXEMPT: Rule to Show Cause in Child or Spousal Support (check reason) Domestic Abuse or Abuse and Neglect Indigent Status State Agency v. Indigent Party Sexually Violent Predator Act Post-Conviction Relief Motion for Stay in Bankruptcy Motion for Publication Motion for Execution (Rule 69, SCRPC) Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
- Name of Court Reporter: Other:

JUDGE'S SECTION

- Motion Fee to be paid upon filing of the attached order.
- Other:

JUDGE _____

CODE: _____ Date: _____

CLERK'S VERIFICATION

- Date Filed: _____ Collected by: _____
- MOTION FEE COLLECTED: _____
- CONTESTED - AMOUNT DUE: _____

000026

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Catherine Virginia Cox,

Plaintiff,

vs.

Kenneth L. Pinckney, Sr. and Stacy Marie St.
Pierre,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO: 2012-CP-07-03182

MOTION FOR SUMMARY JUDGMENT

TO: JAMES H. MOSS, ESQUIRE, ATTORNEY FOR PLAINTIFF, AND TO THE PLAINTIFF ABOVE NAMED:

YOU WILL PLEASE TAKE NOTICE that the undersigned, as attorneys for the Defendant Stacy Marie St. Pierre, will move before the presiding judge of the Beaufort County Courthouse at 10:00 a.m. on the tenth (10th) day after service hereof, or as soon thereafter as counsel may conveniently be heard, for an Order granting summary judgment in favor of the Defendant Stacy Marie St. Pierre on the grounds that there is no genuine issue as to any material fact. The cause of action against St. Pierre is a cause of action for negligent entrustment. However, there is no evidence in this case and the Plaintiffs have admitted by virtue of their Return to Request to Admit from Defendant, St. Pierre, attached as Exhibit A, that Defendant Kenneth L. Pinckney, Sr. was not intoxicated at the time of this accident. Furthermore, there is no evidence of knowledge of or knowledge imputable to Stacy Marie St. Pierre that Kenneth L. Pinckney, Sr. was addicted to intoxicants or had the habit of dinking or that St. Pierre knew or had imputable knowledge that Pinckney was likely to drive while intoxicated.

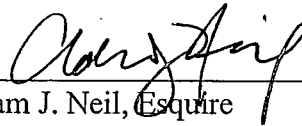
The South Carolina Supreme Court has held on multiple occasions that failure to show these elements is failure to state a cause of action for negligent entrustment. Jones Ex Rel. Jones

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v. Enterprise Leasing Co.-Southeast, 383 S.C. 259, 678 S.E.2d 819 (Ct. App. 2009), McAllister v. Graham, 287 S.C. 455, 339 S.E.2d 154 (Ct. App. 1986), Jackson v. Price, 288 S.C. 377, 342 S.E.2d 628 (Ct. App. 1986), and Gadson Ex Rel. Gadson v. ECO Servs. of S.C., Inc., 374 S.C. 171, 648 S.E.2d 585 (2007).

This Motion is made pursuant to Rule 56 of the South Carolina Rules of Civil Procedure and will be supplemented and supported by such affidavits, depositions, discovery responses, memoranda of law, and such other documents as appropriate.

MURPHY & GRANTLAND, P.A.



Adam J. Neil, Esquire
Wesley B. Sawyer, Esquire
Post Office Box 6648
Columbia, South Carolina 29260
(803) 782-4100
Attorneys for Defendant Stacy Marie St. Pierre

Columbia, South Carolina
January 29, 2013

000028

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFURTO

Catherine Virginia Cox,

Plaintiff,

vs.

Kenneth L. Pinckney, Sr. and Stacy Marie St.
Pierre,

Defendants.

IN THE COURT OF COMMON PLEAS

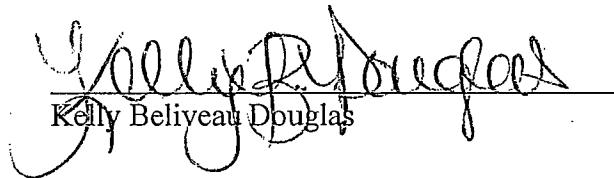
CIVIL ACTION NO: 2012-CP-07-03182

CERTIFICATE OF SERVICE

I, the undersigned employee of the law offices of Murphy & Grantland, P.A., Attorneys for Defendant, Stacy Marie St. Pierre, do hereby certify that I have served a copy of the foregoing, Motion for Summary Judgment, in connection with the above-referenced case by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

James H. Moss, Esquire
Moss, Kuhn & Fleming, P.A.
Post Office Drawer 507
Beaufort, SC 29901-0507

Columbia, South Carolina
January 29, 2013


Kelly Beliveau Douglas

000029

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF BEAUFORT

CIVIL ACTION NO: 2012-CP-07-03182

Catherine Virginia Cox,

Plaintiff,

vs.

**MEMORANDUM IN SUPPORT OF STACY
MARIE ST. PIERRE'S MOTION FOR
SUMMARY JUDGMENT**

Kenneth L. Pinckney, Sr. and Stacy Marie St.
Pierre,

Defendants.

The Defendant Stacy Marie St. Pierre, by and through her undersigned counsel, respectfully submits this Memorandum of Law in support of her Motion for Summary Judgment.

BACKGROUND

This action arises out of a motor vehicle accident that occurred on July 11, 2012 when a vehicle operated by Kenneth Pinckney collided with a vehicle operated by Plaintiff Catherine Cox. Pierre owned the accident vehicle and Plaintiff has alleged a cause of action against Cox for negligent entrustment. However, there is no evidence that Pinkney was under the influence of any intoxicants at the time of the accident or that St. Pierre had any reason to know that Pinkney had a propensity to drive while intoxicated. South Carolina does not recognize a cause of action for negligent entrustment without these elements.

FACTS

On or about July 11, 2012, Pinckney was operating St. Pierre's vehicle when Plaintiff turned left in front of him, causing an accident. Although the parties dispute who was at fault in causing the accident, there is no evidence that Pinckney was under the influence of any intoxicants at the time of the accident. In response to Requests to Admit, Plaintiff only asserts

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that Pinckney was operating his vehicle without a license or under a suspended license. (Plaintiff's Return to Request to Admit from Defendant, St. Pierre, ¶ 1). Moreover, Plaintiff has not revealed any evidence that Pinckney was intoxicated at the time of the accident, that Pinckney was addicted to intoxicants, that St. Pierre had any knowledge of prior drug use by Pinckney or that Pinckney had a propensity to operate a vehicle while intoxicated.

STANDARD OF REVIEW

When considering a motion for summary judgment under Rule 56, the evidence and its reasonable inferences must be viewed in the light most favorable to the non-moving party. *Jones ex rel. Jones v. Enterprise Leasing Company-Southeast*, 383 S.C. 259, 678 S.E.2d 819 (Ct. App. 2009). However, the opposing party may not rely merely upon the allegations of the complaint in opposing a motion for summary judgment. Rather, if a party fails to present evidence supporting an essential element to the cause of action, "there can be 'no genuine issue as to any material fact,' since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial." *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991). To survive summary judgment, the evidence presented must amount to more than mere speculation or conjecture. *D.R. Horton, Inc. v. Westcott Land Co., LLC*, 398 S.C. 528, 730 S.E.2d 340 (Ct. App. 2012).

ARGUMENT

Although other jurisdictions have adopted a more expansive view of the tort of negligent entrustment, South Carolina's Supreme Court has repeatedly rejected this broader application and, instead, chosen to limit the tort to situations involving intoxicants. The elements of negligent entrustment are:

(1) knowledge of or knowledge imputable to the owner that the driver was either addicted to intoxicants or had the habit of drinking; (2) the owner knew or had imputable knowledge that the driver was likely to drive while intoxicated; and (3) under these circumstances, the entrustment of a vehicle by the owner to such a driver.

Gadson ex rel. Gadson v. ECO Services of South Carolina, Inc., 374 S.C. 171, 648 S.E.2d 585 (2007) (citing *Jackson v. Price*, 288 S.C. 377, 342 S.E.2d 628 (Ct. App. 1986)).

The Restatement (Second) of Torts §§ 308 and 390 (1965) applies a broad definition of negligent entrusting that encompasses not only intoxicated drivers, but drivers who, due to their “youth, inexperience, or otherwise” are likely to use the vehicle in a manner involving unreasonable risk of harm to themselves or others. The Court of Appeals attempted to adopt the sections 308 and 390 on two separate occasions. See *Lydia v. Horton*, 343 S.C. 376, 383-85, 540 S.E.2d 102, 106-07 (Ct. App. 2000), *reversed*, 355 S.C. 36, 583 S.E.2d 750 (2003); *Gadson ex rel. Gadson v. ECO Services of South Carolina, Inc.*, Op. No. 2005-UP-130, n.4 (S.C. Ct. App. Feb. 18, 2005), *reversed*, 374 S.C. 171, 648 S.E.2d 585 (2007). In both cases, the Supreme Court reversed the Court of Appeals and expressly declined to adopt sections 308 and 390. *Lydia*, 355 S.C. at 40, n.2, 583 S.E.2d at 753 (“[W]e decline to adopt the Comment or sections 308 and 390 of the Restatement based on these facts presented.”); *Gadson*, 374 S.C. at 177, 648 S.E.2d at 588 (“We decline to adopt sections 308 and 390 of the Restatement based on this set of facts, and we analyze this case under the elements of negligent entrustment set forth in *Jackson*.”)

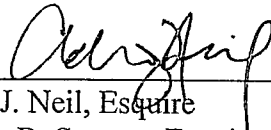
Plaintiff bears the burden of proving each element of her cause of action. Although Plaintiff produced a driving record indicating that Pinckney did not have a license on the date of the accident, she has not produced a shred of evidence indicating that Pinckney was intoxicated on the night of the accident, that Pinckney was addicted to intoxicants, that St. Pierre knew that

Pinckney was addicted to intoxicants, or that St. Pierre knew that Pinckney was likely to drive a vehicle while intoxicated. Because Plaintiff bears the burden at the summary judgment stage of producing some evidence to support these necessary elements and she has failed to do so, St. Pierre is entitled to judgment as a matter of law that she did not negligently entrust the vehicle to Pinckney.

CONCLUSION

For the reasons stated above, St. Pierre respectfully requests that this court enter summary judgment in her favor. Under South Carolina law, negligent entrustment requires evidence of intoxication, addiction to intoxicants, and the owner's knowledge that the driver is likely to drive while intoxicated. Plaintiff has failed to produce any evidence to support these essential elements.

MURPHY & GRANTLAND, P.A.



Adam J. Neil, Esquire

Wesley B. Sawyer, Esquire

Post Office Box 6648

Columbia, South Carolina 29260

(803) 782-4100

Attorneys for Defendant Stacy Marie St. Pierre

Columbia, South Carolina
July 22, 2013

000033

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF BEAUFURTO

CIVIL ACTION NO: 2012-CP-07-03182

Catherine Virginia Cox,

Plaintiff,

vs.

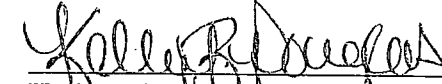
CERTIFICATE OF SERVICE

Kenneth L. Pinckney, Sr. and Stacy Marie St.
Pierre,

Defendants.

I, the undersigned employee of the law offices of Murphy & Grantland, P.A., Attorneys for Defendant, Stacy Marie St. Pierre, do hereby certify that I have served a copy of the foregoing, Memorandum in Support of Motion for Summary Judgment, in connection with the above-referenced case by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

James H. Moss, Esquire
Moss, Kuhn & Fleming, P.A.
Post Office Drawer 507
Beaufort, SC 29901-0507



Kelly Beliveau Douglas

Columbia, South Carolina
July 23, 2013

000034

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

CATHERINE VIRGINIA COX,)

Plaintiff(s))

vs.)

KENNETH L. PINCKNEY, SR. AND STACY MARIE)
ST. PIERRE,)

Defendant(s))

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

201-CP - 07- 03182

Submitted By: James H. Moss
Address: Moss, Kuhn & Fleming, P.A.
P.O. Dr. 507, Beaufort, SC 29901-0507

SC Bar #: 4220
Telephone #: 524-3373
Fax #: 524-1302
Other:
E-mail: jim@mossandkuhn.com

2012 SEP 10 PM 4:05
CLERK OF COURT

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)

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

Submitting Party Signature: 

Date: 09/10/12

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

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FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Clarendon, Colleton, Florence, Greenville, Hampton, Horry, Jasper, Lee, Lexington, Pickens (Family Court Only), Richland, 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.

000036

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

CATHERINE VIRGINIA COX,)
)
Plaintiff,)
)
v.)
)
KENNETH L. PINCKNEY, SR.)
AND STACY MARIE ST. PIERRE,)
)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS
CASE NUMBER: 2012-CP-07- 03182

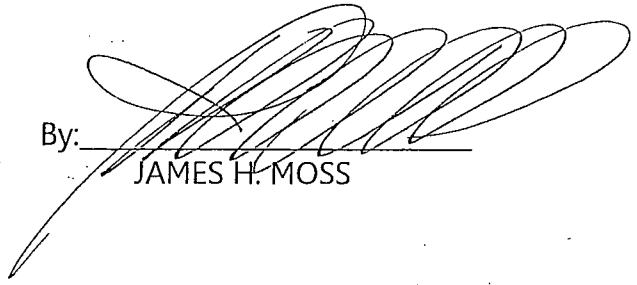
2012 SEP 10 PM 4:05
CLERK OF COURT
BEAUFORT COUNTY, S.C.

SUMMONS

TO: KENNETH L. PINCKNEY, SR. AND STACY MARIE ST. PIERRE, DEFENDANTS HEREIN:

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 upon the subscriber at his office, MOSS, KUHN & FLEMING, P.A., Post Office Drawer 507/1501 North Street, Beaufort, South Carolina 29901-0507, within thirty (30) days from the date of service hereof; exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for a judgment by default and the relief demanded in the attached Complaint.

MOSS, KUHN & FLEMING, P.A.

By: 
JAMES H. MOSS

Beaufort, South Carolina
September 10, 2012

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
CASE NUMBER: 2012-CP-07- 03182

CATHERINE VIRGINIA COX,)
Plaintiff,)

v.)

COMPLAINT
(Jury Trial Requested)

KENNETH L. PINCKNEY, SR.)
AND STACY MARIE ST. PIERRE,)
Defendants.)

2012 SEP 10 PM 4: 05
CLERK OF COURT

The Plaintiff, complaining of the Defendants, alleges:

1. That the Plaintiff is a resident of Beaufort County, State of South Carolina.
2. That the Defendant, Kenneth L. Pinckney, Sr., is a resident of Beaufort County, State of South Carolina.
3. That the Defendant, Stacy Marie St. Pierre, is a resident of Beaufort County, State of South Carolina.
4. That on or about July 11, 2012, the Defendant, Kenneth L. Pinckney, Sr., was driving an automobile owned by the Defendant, Stacy Marie St. Pierre, and was driving said vehicle with the express and/or implied permission of the Defendant, Stacy Marie St. Pierre, and knew, or should have known, that he had no driver's license, and that his driver's license had been suspended for a substantial period of time.
5. That the Defendant herein, Kenneth L. Pinckney, Sr., in a careless and reckless manner and fashion attempted to turn his vehicle right, and then back to the left into the lane that the Plaintiff was legally turning in, after the Plaintiff had yielded right-of-way,

causing a severe and violent collision to the automobile of the Plaintiff, and causing serious injuries and damages to the Plaintiff hereinafter more particularly set forth.

6. That the injuries and damages sustained by this Plaintiff were due to and caused by and were the direct and proximate result of the careless and reckless acts and conduct of the Defendants in one or more of the following particulars, to-wit:

(AS TO THE DEFENDANT, KENNETH L. PINCKNEY, SR.)

- a. In failing to keep a proper lookout;
- b. In failing to keep his vehicle under proper control;
- c. In driving too fast for the conditions then and there existing;
- d. In attempting to turn right, realizing he had a green light, and coming back to the left in the lane the Plaintiff had already established;
- e. In driving without a driver's license;
- f. In driving under the influence of alcoholic beverages;
- g. In driving in excess of the posted speed limit;
- h. In failing to stop, slow or turn his vehicle to yield to the automobile of the Plaintiff, who was already completing her turn;
- i. In driving in a reckless manner and fashion; and
- j. In driving when he knew, or should have known, his license was suspended, and that he had not had one for approximately five (5) or six (6) years.

(AS TO THE DEFENDANT, STACY MARIE ST. PIERRE)

- a. In letting or allowing the Defendant, Kenneth L. Pinckney, Sr., to drive her vehicle when she knew, or should have known, his license was suspended;

b. In letting or allowing the Defendant, Kenneth L. Pinckney, Sr., to drive her vehicle when she knew, or should have known, that he had substantial violations in the past, on which his license had been suspended on numerous occasions;

c. In knowing that the Defendant, Kenneth L. Pinckney, Sr., was incompetent and incapable of driving a vehicle, and in letting and allowing him to use the vehicle; and

d. In failing to question or investigate the driving record and/or driving abilities of the Defendant, Kenneth L. Pinckney, Sr., when she knew, or should have known, there was a substantial question on the same.

7. That by reason of the careless and reckless acts and conduct, this Plaintiff was injured and damaged in the following particulars, to-wit:

That she was forced to be taken away from the collision in an ambulance; that she suffered substantial damage to her left leg, left ankle, left knee, right leg, right knee, and other areas of her body; that she has incurred substantial medical bills and expenses, including expenses for the relief of pain, physical therapy and bills from doctors; that she suffered a fracture and bruising of bones in her body, including her feet, knees and other areas of her body; that she has been forced to undergo and seek medical aid, hospital attention and care; that she has suffered much mental anguish and physical pain, and will continue to suffer mental anguish and physical pain in the future; that she has lost the enjoyment of life, and will continue to lose the enjoyment of life in the future; that she has been impaired and disabled, and will continue to be impaired and disabled in the future; that she has lost wages as a result of her injuries; that her vehicle was bent, damaged and destroyed; that the same had to be repaired; that she lost the use of the same while the

same was being repaired; that she has been injured and damaged in other ways that will be more fully set forth in this matter; all said injuries to her great detriment and damage, both actually and punitively, in such amounts as may be awarded by the jury.

WHEREFORE, the Plaintiff prays for judgment against the Defendants in such amounts as may be awarded by the jury, both actual and punitive damages.

MOSS, KUHN & FLEMING, P.A.

By: 

JAMES H. MOSS

Beaufort, South Carolina
September 10, 2012

000041

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF BEAFURTO

CIVIL ACTION NO: 2012-CP-07-03182

Catherine Virginia Cox,

Plaintiff,

vs.

ANSWER ON BEHALF OF STACY MARIE ST. PIERRE

Kenneth L. Pinckney, Sr. and Stacy Marie St. Pierre,

Defendants.

12 OCT 9 PM 3:18
COURT CLERK
SOUTH CAROLINA

TO: JAMES H. MOSS, ESQUIRE, ATTORNEY FOR PLAINTIFF, AND TO THE PLAINTIFF ABOVE NAMED:

The Defendant, Stacy Marie St. Pierre, answering the Plaintiff's Complaint herein, would respectfully show unto the Court that:

FOR A FIRST DEFENSE

1. This Defendant denies each and every allegation of the Plaintiff's Complaint not hereinafter specifically admitted.
2. Paragraphs 1 and 2 are admitted upon information and belief.
3. Paragraph 3 is admitted.
4. In response to Paragraph 4, Defendant St. Pierre admits that on or about July 11, 2012, Kenneth Pinckney, Sr. was driving an automobile that she owned and was doing so with her permission. The remaining allegations of Paragraph 4 are denied.
5. In response to Paragraph 5, Defendant St. Pierre admits that Defendant Pinckney and the Plaintiff were involved in an automobile accident on or about July 11, 2012. The remaining allegations of Paragraph 5 are denied.
6. The allegations of Paragraph 6, which are targeted toward Kenneth Pinckney and not targeted toward to this Defendant, and no response from Defendant St. Pierre is required. To the

extent those allegations in Paragraph 6 directed toward Defendant Pinckney could be construed to allege any wrong doing or negligence on the part of Defendant St. Pierre, they are denied.

7. Paragraphs 6, a, b, c and d, which are directed to Defendant Stacy St. Pierre are denied.

8. This Defendant is without sufficient information to form a belief as to the truth or falsity of the allegations of Paragraph 7 and, therefore, denies the same. The Defendant denies the Plaintiff's "Wherefore" paragraph.

FOR A SECOND DEFENSE

9. This Defendant would show, upon information and belief, that the Complaint fails to state facts sufficient to constitute a cause of action pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure and, therefore, the Plaintiffs' Complaint should be dismissed with costs.

FOR A THIRD DEFENSE

10. This Defendant would show, upon information and belief, that any injuries or damages sustained by the Plaintiff, which are specifically denied, were the result of the acts or omissions of others not in the employ or control of this Defendant and, therefore, the Plaintiff cannot recover from this Defendant in any sum whatsoever.

FOR A FOURTH DEFENSE

11. This Defendant would show, upon information and belief, that any injuries or damages sustained by the Plaintiff were due to his own negligent, careless, reckless and grossly negligent acts or omissions which combined and concurred with any negligence on the part of the Defendant, which is specifically denied, to produce such injuries or damages, if any, and without which such injuries or damages would not have occurred. The Defendant pleads such negligence, carelessness, recklessness and gross negligence on the part of the Plaintiff and would ask that this court compare the negligence of the Plaintiff and the Defendant and if it is determined that the

Plaintiff's negligence, carelessness, recklessness and gross negligence was greater than the negligence, carelessness, recklessness and gross negligence of the Defendant, which is specifically denied, then the Plaintiff should be totally barred from recovery and if it is determined that the Plaintiff's negligence, carelessness, recklessness and gross negligence is equal to or less than the negligence of the Defendant, then the amount of recovery available to the Plaintiff should be reduced by the percentage of the Plaintiff's own negligence, carelessness, recklessness and gross negligence.

FOR A FIFTH DEFENSE

12. Any award of punitive damages should not exceed the greater of three (3) times the amount of compensatory damages as provided for in S.C. Code Ann. §15-32-530.

FOR A SIXTH DEFENSE

13. Pursuant to S.C. Code Ann. §15-32-520, any proceeding to determine punitive damages should be bifurcated from any trial to determine liability and compensatory damages.

FOR A SEVENTH DEFENSE

14. This Defendant would show, upon information and belief, that the Plaintiff's claim for punitive damages violates the Fifth, Sixth, Seventh, Eighth and Fourteenth Amendments to the Constitution of the United States of America in that it violates the double jeopardy clause in that this Defendant could be subjected to multiple awards of punitive damages for the same set of facts; the self-incrimination clause is being violated because this Defendant can be compelled to give testimony against itself in a penalty situation such as punitive damages; the assessment of punitive damages by a burden of proof less than beyond a reasonable doubt is violative of the Sixth and Fourteenth Amendments in that punitive damages are a fine or penalty and are, therefore, quasi-criminal in nature; Plaintiff's claim for punitive damages violates this Defendant's right to access the courts as guaranteed by the Seventh and Fourteenth Amendments because the threat of an award of punitive damages chills this Defendant's exercise of that right; the Plaintiff's claim for punitive

damages violates the Eighth Amendment's guarantee that excessive fines shall not be imposed, the Plaintiff's claim for punitive damages violates both the due process and equal protection clauses of the Fourteenth Amendment in that the standard for awarding either punitive damages is unduly vague and, therefore, violates both procedural and substantive due process safeguards; therefore, the Plaintiff's claim for punitive damages should be dismissed.

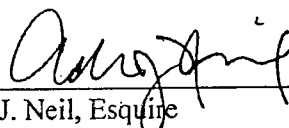
FOR A NINTH DEFENSE

15. The Defendant specifically reserves the right to assert any further defenses as may be revealed by additional information acquired during discovery or otherwise from any other party herein. The Defendant further reserves the right to amend this Answer to the Third Party Complaint to assert any other applicable defenses, to assert any applicable cross and/or counterclaims, and to implead any other applicable parties.

WHEREFORE, having fully answered, this Defendant prays that the Plaintiff's Complaint be dismissed with costs.

This Defendant demands a jury trial.

MURPHY & GRANTLAND, P.A.



Adam J. Neil, Esquire
Post Office Box 6648
Columbia, South Carolina 29260
(803) 782-4100
Attorneys for Defendant Stacy Marie St. Pierre

Columbia, South Carolina
October 16, 2012

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF BEAUFURTO

CIVIL ACTION NO: 2012-CP-07-03182

Catherine Virginia Cox,

Plaintiff,

vs.

Kenneth L. Pinckney, Sr. and Stacy Marie St.
Pierre,

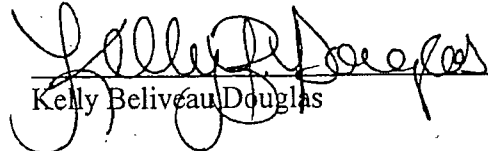
Defendants.

CERTIFICATE OF SERVICE

12 OCT 19 PM 3:18
lwo
CLERK OF COURT
S.C.

I, the undersigned employee of the law offices of Murphy & Grantland, P.A., Attorneys for Defendant, Stacy Marie St. Pierre, do hereby certify that I have served a copy of the foregoing, Answer, in connection with the above-referenced case by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

James H. Moss, Esquire
Moss, Kuhn & Fleming, P.A.
Post Office Drawer 507
Beaufort, SC 29901-0507



Kelly Beliveau Douglas

Columbia, South Carolina
October 16, 2012

000046

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF BEAFURTO

CIVIL ACTION NO: 2012-CP-07-03182

Catherine Virginia Cox,

Plaintiff,

vs.

**DEFENDANT STACY MARIE ST. PIERRE'S
FIRST SET OF REQUEST TO ADMIT TO
PLAINTIFF**

Kenneth L. Pinckney, Sr. and Stacy Marie St.
Pierre,

Defendants.

**TO: JAMES H. MOSS, ESQUIRE, ATTORNEY FOR PLAINTIFF, AND TO THE
PLAINTIFF ABOVE NAMED:**

Pursuant to Rule 36 of the South Carolina Rules of Civil Procedure, you are hereby served with this written request for the admissions of fact and genuineness of documents for the purpose of the pending action only. Such requests for admissions, pursuant to the Rule, shall be deemed admitted unless within thirty (30) days from the date hereof, the undersigned at his address receives a written answer or objection. If objection is made, the reasons therefor shall be stated. The answer to each request shall specifically deny the matter or set forth in detail why the answering party cannot truthfully admit or deny the matter. Any such denial shall fairly meet the substance of the requested admissions, and when good faith requires 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.

1. Admit you have no evidence of any drug use, alcohol use, or any other impairment on the part of the Defendant Pinckney at the time of the accident.

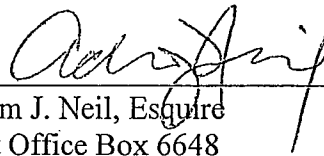
000047

2. Admit that you have no knowledge or evidence of any history of drug or alcohol use or abuse in the past by Defendant Pinckney that would lead Defendant St. Pierre to believe she should not entrust Pinckney with her vehicle.

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.

You will hereby take notice, that if you fail to admit these Requests for Admissions, and if the undersigned hereafter proves the truth of the matter, the undersigned shall apply to the Court for an Order requiring the party to pay the reasonable expenses incurred in making such proof, which shall include reasonable attorney's fees.

MURPHY & GRANTLAND, P.A.



Adam J. Neil, Esquire
Post Office Box 6648
Columbia, South Carolina 29260
(803) 782-4100
Attorneys for Defendant, Stacy Marie St. Pierre

Columbia, South Carolina
December 12, 2012

000048

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT.)

CATHERINE VIRGINIA COX,)
)
Plaintiff,)
)
vs.) *PLAINTIFF'S RETURN TO REQUEST TO ADMIT*
) *FROM DEFENDANT, ST. PIERRE*
KENNETH L. PINCKNEY, SR.,)
and STACY MARIE ST. PIERRE,)
)
Defendants.)

TO: ADAM J. NEIL, ESQUIRE, COUNSEL FOR DEFENDANT, ST. PIERRE:

The Plaintiff herein, by and through her undersigned counsel, would propound the following responses to the *Request to Admit* dated December 12th, 2012, from the Defendant, St. Pierre, in accordance with the requirements of *Rule 36 of the South Carolina Rules of Civil Procedure*, as follows, to wit:

1. Admit you have no evidence of any drug use, alcohol use, or any other impairment on the part of the Defendant Pinckney at the time of the accident.

ANSWER: Denied. Plaintiff is in possession of the 10 year Driver Record of Defendant, Pinckney, previously produced to the defense on November 27, 2012, showing his license to drive was suspended and the license surrendered on 07/29/99, showing he was driving without a license and/or under suspension, certainly qualifying as an "impairment" to his ability to legally drive a vehicle on the roads of South Carolina. In addition, a copy of Defendant's criminal record available through an online search of Beaufort County records

reveals charges of possession of cocaine as well as possession with intent to distribute cocaine in 1998. Further investigation of Defendant's criminal record, if any, as well as his deposition testimony is required in this matter.

2. Admit that you have no knowledge or evidence of any history of drug or alcohol use or abuse in the past by Defendant Pinckney that would lead Defendant St. Pierre to believe she should not entrust Pinckney with her vehicle.

ANSWER: Denied. See answer to #1 above.

MOSS, KUHN & FLEMING, P.A.

By: 

James H. Moss, Esquire

Beaufort, South Carolina

December 20, 2012

000050



10 YEAR DRIVER RECORD

Customer No: 25064380 Driver License No: 8676988
 Name: PINCKNEY, KENNETH LAMOTT
 Address: 156 SIMMONSVILLE RD
 City: BLUFFTON State: SC Zip: 299105911
 County: BEAUFORT
 DOB: 06/14/1963 Sex: M Driver Training: N

Status - DL: SUSPENDED CDL: DISQUALIFIED

License Information

Type	Class	Function	Issued	Expires	First Issued	Restrictions	Endorsements
DL	D	Returned	06/22/1998	06/14/2003	06/09/1993	N	N
DL	D	Re-exam	06/22/1998	06/14/2003	06/09/1993	N	N

Point Summary

Total Current Points: 0
 Driver Credit: -0
 Adjusted Current Points: 0

SC Driver License Surrendered

License Type: DL Class: D Posted: 07/27/2002
 Date Surrendered: 07/29/1999 Function: Re-exam Issued: 06/22/1998
 Reason for Return: SUSPENDED LICENSE

SUSP: 036 - Controlled Substance Violation

Special Driving Privilege: NONE Ticket#: 80760AR
 Suspension Beg: 02/03/1999 Suspension End: 02/03/2000
 Causal: 11/14/1998 Post: 08/20/1999
 Reinstatement Requirements Met: INDEFINITE Reinstatement Fee Paid: N
 Status: Active Last Change: 07/30/2002

SUSP: 097 - Failure to Pay Traffic Ticket

Suspension Beg: 02/26/1999 Ticket#: V693512
 Causal: 09/26/1998 Suspension End: INDEFINITE
 Ticket Paid: Post: 02/03/1999
 ACD: Court Name: Compliance Received:
 Court Address:
 City: State: Zip:
 Phone No:

SUSP: 097 - Failure to Pay Traffic Ticket

Suspension Beg: 02/27/1999 Ticket#: V693511
 Causal: 09/26/1998 Suspension End: INDEFINITE
 Ticket Paid: Post: 02/03/1999
 ACD: Court Name: Compliance Received:
 Court Address:

City:
Phone No:

State: Zip:

SUSP: 097 - Failure to Pay Traffic Ticket
Suspension Beg: 02/25/1999
Causal: 10/05/1998
Ticket Paid:
ACD: Court Name:
Court Address:
City:
Phone No:

Ticket#: 86087AV

Suspension End: INDEFINITE
Post: 02/03/1999
Compliance Received:

State: Zip:

SUSP: 036 - Controlled Substance Violation
Special Driving Privilege: NONE
Suspension Beg: 02/03/1999
Causal: 11/14/1998
Reinstatement Requirements Met: INDEFINITE
Status: Active

Ticket#:

Suspension End: 08/03/1999
Post: 01/21/1999
Reinstatement Fee Paid: N
Last Change: 07/30/2002

SUSP: 097 - Failure to Pay Traffic Ticket
Suspension Beg: 01/24/1999
Causal: 08/29/1998
Ticket Paid:
ACD: Court Name:
Court Address:
City:
Phone No:

Ticket#: 61797AX

Suspension End: INDEFINITE
Post: 12/30/1998
Compliance Received:

State: Zip:

END OF REPORT

7/20/2012 11:08 AM

Data obtained from DMV via South
Carolina State Portal

Invoice #10548318

000052

8676988

Beaufort County Online Search

PINCKNEY,KENNETH LAMOTT



6141963 SC CHARLESTON
M 510
B 195
BLK BRO B

000000048416 PINCKNEY,KENNETH LAMOTT 510
RT1 BOX 117 SIMMONSVILRD 195
BLUFFTON, SC 29902
000000075886 11/14/1998 500 Hours
250 Hours
EDWARDS,A BCSO 11/14/1998

0000SIG-8C J - PWITD COCAINE 0 \$0.00 11/14/1998 RELEASED OWN RECOGNIZANCE
0000SIG-8P J - SPM 0 \$0.00 11/14/1998 RELEASED OWN RECOGNIZANCE
0000COCAINE J - POSS OF COCAINE 1 \$0.00 11/14/1998 CHARGE SATISFIED
0000COCAINE J - POSS OF COCAINE 0 \$0.00 11/14/1998 RELEASED OWN RECOGNIZANCE

12/08/1998 14:30 RELEASED OWN RECOGNIZANCE

000000048416 PINCKNEY,KENNETH LAMOTT 510
RT1 BOX 117 SIMMONSVILRD 195
BLUFFTON, SC 29902
000000074708 08/29/1998 1500 Hours
MARSHALL,MICHAEL 825 Hours
RICE DW BCSO 08/29/1998

0000010-99M J - MAGISTRATE B/W 0 \$125.00 08/29/1998 POSTED BOND
00056-3-110 J - NO VEHICLE LICENSE 1 \$0.00 08/29/1998 CHARGE SATISFIED

000053

08/31/1998

13:25

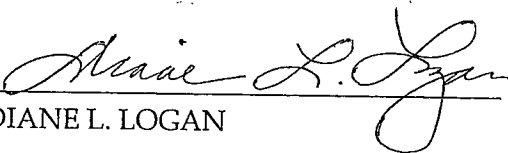
RELEASED OWN RECOGNIZANCE

000054

CERTIFICATE OF SERVICE

I, DIANE L. LOGAN, Assistant to James H. Moss, counsel of record for the Plaintiff in the foregoing action, do certify that on the 20th day of December, 2012, I caused to be deposited in the United States Mails, postage pre-paid, and via facsimile, a service copy of the within *Plaintiff's Return to Defendant's Request to Admit*, with the same being addressed to opposing counsel of record as follows, to wit:

Adam J. Neil, Esquire
MURPHY & GRANTLAND, PA
Post Office Box 6648
Columbia, South Carolina. 29260

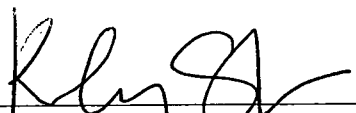

DIANE L. LOGAN

000055

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

MOSS, KUHN & FLEMING, P.A.

By: 
Kimberly L. Smith
Post Office Drawer 507
Beaufort, South Carolina 29901
(843) 524-3373 Telephone
(843) 524-1302 Facsimile

Beaufort, South Carolina
May 20, 2014

Attorneys for the Appellant

RECEIVED

MAY 22 2014

SC Court of Appeals

000056

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

D. Craig Brown, Circuit Court Judge

Case No. 2013-002474

Catherine Virginia Cox,

Appellant.

vs.

Kenneth L. Pinckney, Sr. and Stacy Marie St. Pierre,

Respondents.

CERTIFICATE OF SERVICE

Undersigned certifies that the Record on Appeal, to which this certificate is affixed, was served upon the party (s) to this action by hand delivery or by depositing a copy of same, enclosed in a first class, postpaid wrapper properly addressed to the attorney(s) of record:

Adam J. Neil, Esquire
Wesley B. Sawyer, Esquire
Murphy & Grantland, P.A.
Post Office Box 6648
Columbia, South Carolina 29260

in a post office or official depository under the exclusive care and custody of the United States Postal Service, on May 20, 2014.

By:


Sue Radford

000057

RECEIVED

MAY 22 2014

SC Court of Appeals