

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )  
 )  
 Gregory Muxlow, individually and as )  
 Personal Representative of the Estate of )  
 Jennifer Muxlow, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 Natasha Anglin, Henrietta Benson, )  
 Donita Failey, Arnold Harris, Yokeema )  
 Harris, Ruby Tuesday, KC Mulligan's, )  
 ARIUM St. Ives, Carroll Management )  
 Group, South Carolina Department of )  
 Transportation, City of North Charleston, )  
 Charleston County, )  
 )  
 Defendants. )  
 )

IN THE COURT OF COMMON PLEAS  
 CASE No.: 2019-CP-10-04193

AMENDED ORDER GRANTING RUBY  
 TUESDAY, INC.'S MOTION TO DISMISS  
 AND MOTION FOR JUDGMENT ON THE  
 PLEADINGS

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 SC Court of Appeals

These matters came before the undersigned judge on defendant, Ruby Tuesday, Inc.'s (hereinafter "Ruby Tuesday") motions to dismiss and for judgment on the pleadings on January 10, 2020. Present at the hearing were Josh Hawkins, attorney for the plaintiff, Catharine Garbee Griffin, attorney for Ruby Tuesday, Elizabeth Fulton, attorney for ARIUM St. Ives and Carroll Management Group, LLC, Chris Kovach, attorney for the South Carolina Department of Transportation, Charleston County, and City of North Charleston, and Christopher Lizzi, attorney for K.C. Mulligans. This Court issued a Form 4 Order on January 13, 2020 granting Ruby Tuesday's motions. This court also granted the motions filed by ARIUM St Ives, Carroll Management Group and K.C. Mulligan's. Ruby Tuesday filed a motion pursuant to Rule 59(e), SCRCF seeking to amend the Form 4 Order to set forth the basis for the granting of the motions. This court hereby grants Ruby Tuesday's motion to amend the judgment and issues this order setting forth its reasoning for dismissing the claims brought by the plaintiff, individually, and as

the personal representative of the Estate of Jennifer Muxlow. Based on the pleadings, the memorandum filed by Ruby Tuesday's in support of its Motion to Dismiss and Motion for Judgment on the Pleadings, the responses filed by Plaintiff in opposition to the motion to dismiss, and the arguments presented at the hearing, this Court hereby amends its Form 4 Order and sets forth its reasoning for granting Ruby Tuesday's Motion to Dismiss and Motion for Judgment on the Pleadings.

### PROCEDURAL HISTORY

The plaintiff initiated this action on April 24, 2019 in Greenville County. Ruby Tuesday filed a Motion to Dismiss and a Motion for Judgment on the Pleadings in response to the initial Complaint. Thereafter, the plaintiff amended his Complaint and filed the Amended Complaint on July 18, 2019. Ruby Tuesday responded to the Amended Complaint by filing again its Motion to Dismiss and Motion for Judgment on the Pleadings. During the pendency of the initial Complaint and before the filing of the Amended Complaint, K.C. Mulligans, the South Carolina Department of Transportation, the City of North Charleston, and Charleston County moved to transfer venue to Charleston County.

The Honorable Edward W. Miller held a hearing on July 23, 2019, granted the Motion to Transfer Venue to Charleston County, and ruled that all of the pending motions, including the motions filed by Ruby Tuesday, would be considered by the court in Charleston County. Thereafter, all of the pending motions were heard by this Court on January 10, 2020. This Court granted Ruby Tuesday's Motion to Dismiss and Motion for Judgment on the Pleadings, granted ARIUM and Carroll Management's Motion to Dismiss, and granted K.C. Mulligan's Motion to Dismiss in a Form 4 Order filed on January 13, 2020.

## FACTS

Plaintiff Gregory Muxlow filed this action in his individual capacity and as the Personal Representative of the Estate of Jennifer Muxlow. The action arises out of an automobile accident which occurred on the night of November 20, 2018 when Ms. Muxlow was struck by a vehicle operated by the Defendant Anglin while crossing Highway 52 on foot in Charleston, South Carolina. Ms. Muxlow died as a result of the injuries she sustained in the car accident.

The complaint alleges claims against a number of individuals and entities, including Ruby Tuesday. Plaintiff alleges that Jennifer Muxlow was a server at the Ruby Tuesday location on Northside Drive in Charleston beginning in August of 2016. Plaintiff also alleges that during all times of her employment, Ruby Tuesday had a company policy against managers dating subordinates and prohibiting “verbal abuse”, “offensive or abusive physical contact ... unwelcome touches or other unwelcome physical contact, whether on or off company property, whether on or off duty, or in conjunction with work in any way.” Despite this policy, Plaintiff alleges that Defendant Harris, the manager of the Northside Drive Ruby Tuesday location, pursued a “romantic relationship” with Ms. Muxlow. Plaintiff further alleges that Defendant Harris became “verbally, psychologically, and physically” abusive to Ms. Muxlow. Defendant Harris also allegedly took her car without permission and used the car to meet other women for sexual relations and to buy and sell illegal drugs.

Plaintiff alleges that the father of Ms. Muxlow, Billy Muxlow, reported the relationship between Defendant Harris and his daughter to Ruby Tuesday’s district manager and corporate office and expressed his concerns regarding the relationship. Plaintiff alleges that, upon information and belief, Ruby Tuesday’s did not terminate, suspend, or otherwise discipline Mr. Harris, ignoring the company policy violation, and allowed Mr. Harris to continue dating Ms.

Muxlow. Once Mr. Muxlow learned of Defendant Harris's alleged abusive behavior to his daughter, he allegedly informed two Ruby Tuesday employees and the corporate office, whose representative indicated that the report would be investigated. Plaintiff alleges that Ms. Muxlow's hours were reduced in retaliation for Mr. Muxlow's report of Defendant Harris's misconduct. Ruby Tuesday alleged in their Answer that Ms. Muxlow no longer was employed with Ruby Tuesday as of April 27, 2017.

The Amended Complaint then alleges that Ms. Muxlow and Defendant Harris moved into an apartment together in August of 2018. On the night of November 20, 2018, Defendant Harris allegedly stole Ms. Muxlow's car and wallet with the intent to have sexual relations with another individual and buy cocaine. The Amended Complaint alleges that "Harris was able to do all of this because his improper abusive relationship with Jennifer was allowed to go unchecked by Ruby Tuesday, even though Ruby Tuesday was repeatedly put on notice of the policy violations that endangered its employee, Jennifer." (Am. Complaint, ¶ 29). Ms. Muxlow allegedly became distressed and started a frantic search on foot for Defendant Harris and her property. During this search, Ms. Muxlow walked across Rivers Avenue, Highway 52, in North Charleston, and was hit by a vehicle driven by Defendant Anglin, who was allegedly distracted, driving at a high rate of speed and in a grossly negligent manner. Ms. Muxlow subsequently died from her injuries caused by the collision with the car.

The Plaintiff asserts causes of action for recklessness and negligence against Ruby Tuesday for causing the car accident between Anglin and Muxlow and specifically alleges that

52. Defendant Ruby Tuesday, through its policies and procedures, undertook certain duties to the plaintiff and other employees. By creating, implementing, and enforcing duties to prohibit employees from dating their subordinates and from engaging in physical or verbal abuse, even when such abuse occurs off company property and is unrelated to work, Ruby Tuesday

undertook duties to prevent its employees from being subjected to such conduct, to prohibit employees from forming relationships with their subordinates, to prohibit employees from engaging in abusive language or actions either in the workplace or outside of work, and to properly discipline and terminate employees who violate these policies.

(Am. Complaint, ¶ 52). Plaintiff also alleges that the corporate defendants (presumably including Ruby Tuesday) are liable for their own actions “and vicariously liable through the doctrine of *respondeat superior* for the actions of their agents and/or employees”. (Am. Complaint, ¶ 48). In addition, Plaintiff alleges causes of action for negligent hiring, supervision, and retention. (Am. Complaint, ¶ 64-68). Plaintiff includes causes of action for survival and wrongful death. (Am. Complaint, ¶ 69-79). Plaintiff also alleges that Ruby Tuesday’s “failure to enforce company policies designed for the protection of both employees and the general public” violates South Carolina Unfair Trade Practices Act. (Am. Complaint, ¶ 80-86).

#### **STANDARDS FOR MOTIONS**

Under Rule 12(b)(6), SCRCP, a defendant may make a motion to dismiss based on a failure to state facts sufficient to constitute a cause of action. When ruling on a Rule 12(b)(6) motion to dismiss for failure to state a claim, the motion must be granted if, viewing the evidence in the plaintiff’s favor, the “facts alleged in the complaint and inferences reasonably deducible therefrom do not entitle the plaintiff to relief on any theory of the case.” Brown v. Theos, 338 S.C. 305, 526 S.E.2d 232 (Ct. App. 1999) *aff’d*, 345 S.C. 626, 550 S.E.2d 304 (2001). When the dispute is not to the underlying facts but involves the interpretation of the law, it is proper to decide issues on a 12(b)(6) motion. Id.

A motion for judgment on the pleadings pursuant to Rule 12(c), SCRCP, will be sustained where the pleadings are so defective that, taking all the facts alleged in the pleadings as admitted, no cause of action is stated. Rosenthal v. Unarco Indus., Inc., 278 S.C. 420, 297 S.E.2d 638 (1982).

While a Rule 12(c) motion admits the well pleaded facts in the complaint, it does not admit the inferences drawn by the plaintiff from such facts, nor does it admit conclusions of law. Fireman's Ins. Co. v. Cincinnati Ins. Co., 302 S.C. 234, 235, 394 S.E.2d 855, 856 (Ct. App. 1990). A motion for judgment on the pleadings considers the allegations in the defendant's answer and other pleadings in the case also. Brown v. United Ins. Co. of America, 268 S.C. 254, 233 S.E. 2d 298 (1977).

### **DISCUSSION**

"To recover for negligence, a plaintiff must show: (1) a duty of care owed by the defendant to the plaintiff; (2) a breach of that duty by a negligent act or omission; and (3) damage proximately resulting from the breach." Washington v. Lexington Cty. Jail, 337 S.C. 400, 405, 523 S.E.2d 204, 207 (Ct. App. 1999). "The absence of any one of these elements renders the cause of action insufficient." Id. This Court dismisses the causes of action against Ruby Tuesday because, as a matter of law, Ruby Tuesday did not owe the Plaintiff a duty. In the event a duty was owed, any breach of that duty was not the proximate cause of Ms. Muxlow's death. Furthermore, this Court finds that the Amended Complaint fails to state claims upon which relief can be granted against Ruby Tuesday for vicarious liability, negligent hiring, negligent supervision, negligent retention, and for violation of the South Carolina Unfair Trade Practices Act.

#### **1. RUBY TUESDAY OWED NO DUTY TO PLAINTIFF**

"In any negligence action, the threshold issue is whether the defendant owed a duty of care to the plaintiff." Bass v. Gopal, Inc., 395 S.C. 129, 134, 716 S.E.2d 910, 913 (2011). The issue of whether a duty is owed to the plaintiff is a question of law to be decided by the court. See id. "At common law, there was no duty imposed on a person to act." Burns v. S. Carolina Comm'n for Blind, 323 S.C. 77, 79, 448 S.E.2d 589, 590 (Ct. App. 1994). "A person generally incurs no

liability for failure to take steps to benefit others or to protect others from harm not created by his own wrongful act.” Id. Pursuant to South Carolina law, “[a]n affirmative legal duty to act exists only if created by statute, contract, relationship, status, property interest, or some other special circumstance.” Carson v. Adgar, 326 S.C. 212, 217, 486 S.E.2d 3, 5 (1997). “There is no general duty to control the conduct of another or to warn a third person or potential victim of danger.” Faile v. S. Carolina Dep't of Juvenile Justice, 350 S.C. 315, 334, 566 S.E.2d 536, 546 (2002). The South Carolina appellate courts have fashioned five exceptions to this rule: 1) where the defendant has a special relationship to the victim; 2) where the defendant has a special relationship to the injurer; 3) where the defendant voluntarily undertakes a duty; 4) where the defendant negligently or intentionally creates the risk and 5) where a statute imposes a duty on the defendant. Id.

The plaintiff bases his allegations establishing Ruby Tuesday’s duty to the plaintiff on the theory that the employee handbook containing company policies against dating subordinates and verbal and physical abuse was a voluntary undertaking, stating “Defendant Ruby Tuesday, through its policies and procedures, **undertook** certain duties to the plaintiff and other employees” (Am. Complaint, ¶52) (emphasis added). Assuming for the purposes of this motion that the allegations regarding the contents of the policy are true, this Court concludes that the policies of Ruby Tuesday do not create a duty. The adoption of a company policy is not a voluntary undertaking and is not sufficient to create a legal duty in South Carolina. Doe 2 v. Citadel, 421 S.C. 140, 805 S.E.2d 578 (Ct. App. 2017). A company policy can be evidence of a standard of care if a duty is already established. Id. However, if no duty has been established evidence of the standard of care is not relevant. Id. Courts have rejected the argument that company policies constitute voluntary undertakings that create a duty, holding that doing so would “discourage, indeed penalize, voluntary assumption or self-imposition of safety standards by commercial

enterprises, thereby increasing the risk of danger.” Hall v. Toreos, II, Inc., 626 S.E.2d 861,867 (N.C. Ct. App. 2006) and Mynhard v. Elon University, 725 S.E.2d 632 (N.C. Ct. App. 2012). To hold that an employee handbook against dating subordinate employees creates a duty to protect a consenting adult who no longer works for Ruby Tuesday from her live-in boyfriend’s actions at their apartment and his behavior in seeking other women and drugs is beyond reason. The Amended Complaint does not allege that Ms. Muxlow was still employed by Ruby Tuesday at the time of the accident because she was not. Counsel for Muxlow agreed at the hearing that Ms. Muxlow was not working at Ruby Tuesday at the time of her death. The answer of Ruby Tuesday furthermore alleges that the date of Muxlow’s termination was April 20, 2017, almost eighteen months before the car accident.

This court concludes that Ruby Tuesday’s policies and procedures did not create a duty to protect Plaintiff’s decedent. Therefore, all of the claims against Ruby Tuesday, whether brought by the Estate of Jennifer Muxlow or individually by Gregory Muxlow, are dismissed as a matter of law pursuant to Ruby Tuesday’s Motion for Judgment on the Pleadings. Furthermore, this court also dismisses any claim brought individually by Gregory Muxlow as Ruby Tuesday also owed him no duty. “If there is no duty, then the defendant in a negligence action is entitled to a judgment as a matter of law.” Madison ex rel. Bryant v. Babcock Center, Inc., 371 S.C. 123 at 135-36, 638 S.E.2d 650 at 656 (2006).

2. **RUBY TUESDAY IS NOT VICARIOUSLY LIABLE FOR THE ACTS OF DEFENDANT HARRIS**

The Amended Complaint contains an allegation that the corporate defendants are liable for their own actions “and vicariously liable through the doctrine of *respondeat superior* for the actions of their agents and/or employees.” (Am. Complaint, ¶ 48). To the extent that Plaintiff is alleging that Ruby Tuesday is responsible for the actions of Defendant Harris, this court finds no

support in the allegations in the Complaint to hold that Ruby Tuesday would be vicariously liable for the private actions of Harris who allegedly took Muxlow's car and debit card to meet another woman and buy cocaine, and, thus, dismisses the plaintiff's claims for vicarious liability to the extent they are pled against Ruby Tuesday.

"A plaintiff seeking recovery from the master for injuries [caused by a servant] must establish that the relationship existed at the time of the injuries, and also that the servant was then about his master's business and acting within the scope of his employment." Lane v. Modern Music, Inc., 244 S.C. 299, 304-05, 136 S.E.2d 713, 716 (1964) (emphasis added). "An act is within the scope of a servant's employment where reasonably necessary to accomplish the purpose of his employment and is in furtherance of the master's business." Gathers v. Harris Teeter Supermarket, Inc., 282 S.C. 220, 227, 317 S.E.2d 748, 753 (Ct. App. 1984).

The Amended Complaint contains absolutely no allegations that Defendant Harris was acting in the course and scope of his employment with Ruby Tuesday or that he was even still employed at Ruby Tuesday when he committed the alleged acts on November 20, 2018. Furthermore, South Carolina considers intentional torts outside the course and scope of employment. *See* Hamilton v. Davis, 300 S.C. 411, 389 S.E.2d 297 (Ct. App. 1990) (affirming summary judgment on vicarious liability claim where employee committed assault). *See, e.g.* Rabon v. Guardsmark, Inc., 571 F.2d 1277 (4th Cir. 1978) (holding as matter of South Carolina law that security guard's assault was not in furtherance of employer's business or within scope of employment but affected an independent purpose despite occurring at time he should have been about business of employer and at place of employment.); Park v. Southeast Service Corp., 771 F.Supp.2d 588 (D.S.C. 2011) (dismissing claim against employer under respondeat superior argument applying South Carolina law because plaintiff did not submit a plausible argument

regarding how employee's decision to videotape plaintiff in restroom was committed in furtherance of employment and holding that employee's acts were a "temporary suspension of master-servant relationship"). This Court finds that there is no factual allegation to support the vicarious liability claim against Ruby Tuesday. The plaintiff's allegations wholly support that this was a private relationship between two consenting adults and the actions alleged to have been done by Harris were not within the course and scope of his employment with Ruby Tuesday.

Plaintiff also makes a claim for negligent hiring, supervision, and retention. (Am. Complaint, ¶ 64-68). In Degenhart v. Knights of Columbus, the South Carolina Supreme Court recognized a duty of an employer "to exercise reasonable care to control an employee acting outside the scope of his employment" under the circumstances described in Restatement (Second) of Torts § 317 (1965). Degenhart, 309 S.C. 114, 116-17, 420 S.E.2d 495, 496 (1992). The court adopted § 317, "Duty of Master to Control Conduct of Servant", which states:

A master is under a duty to exercise reasonable care so to control his servant while acting outside the scope of his employment as to prevent him from intentionally harming others or from so conducting himself as to create an unreasonable risk of bodily harm to them, if

- (a) the servant
  - (i) is upon the premises in possession of the master or upon which the servant is privileged to enter only as his servant, or
  - (ii) is using a chattel of the master, **and**
- (b) the master
  - (i) knows or has reason to know that he has the ability to control his servant, and
  - (ii) knows or should know of the necessity and opportunity for exercising such control.

Restatement (Second) of Torts § 317 (1965) (emphasis added). The Supreme Court found both that the plaintiff in Degenhart had presented no evidence that the employee harmed the third party while utilizing the premises or chattel of the employer and found that no facts existed tending to

show the employer knew or should have known that it should exercise control over the employee. Therefore, the lower court's grant of summary judgment for the employer on the negligent supervision claim was affirmed.

Negligent hiring, supervising, and retention are based on section 317 of the Restatement (Second) of Torts. Consequently, for the Plaintiff be able to proceed with causes of action against Ruby Tuesday for negligent hiring, supervising, or retention, the plaintiff must prove that plaintiff's decedent was intentionally harmed by Ruby Tuesday's employee on Ruby Tuesday's premises (or premises on which they were privileged to enter only as Ruby Tuesday's employees) or while the employee was using a chattel of Ruby Tuesday and Ruby Tuesday (1) knew or had reason to know it had the ability to control his employees and (2) knew or should know of the necessity and opportunity for exercising such control. This Court finds that the Amended Complaint does not contain allegations meeting these requirements. Because the required elements for these claims are not present, this Court also dismisses these causes of action.

3. **PLAINTIFF'S CLAIM UNDER THE SOUTH CAROLINA UNFAIR TRADE PRACTICES ACT FAILS AS A MATTER OF LAW**

Plaintiff's sixth cause of action attempts to make a claim under the South Carolina Unfair Trade Practices Act (hereinafter "SCUTPA") on behalf of the Estate. However, SCUTPA prohibits claims brought in a representative capacity. The statute states: "Any person who suffers any ascertainable loss of money or property . . . may bring an action individually, but not in a representative capacity, to recover actual damages." S.C. Code Ann. § 39-5-140(a). The South Carolina Court of Appeals upheld a circuit court's grant of summary judgment on a SCUTPA claim brought by the personal representative of an estate, holding that an action for losses incurred by the decedent under SCUTPA could not be maintained. Wogan v. Kunze, 366 S.C. 583, 609, 623 S.E.2d 107, 121 (Ct. App. 2005), *aff'd as modified*, 379 S.C. 581, 666 S.E.2d 901 (2008).

“SCUTPA prohibits the survival of a cause of action after a plaintiff’s death.” Williams v. Preiss-Wal Pat III, LLC, 17 F.Supp.3d 528, 538 (D.S.C. 2014) (granting defendants’ motion to dismiss SCUTPA claims brought by personal representatives of estate of decedent). Because plaintiff’s SCUTPA claim was only brought in a representative capacity, this court dismisses the South Carolina Unfair Trade Practice claims pursuant to S.C. Code Ann. § 39-5-140(a).

Additionally, the SCUTPA claim fails as a matter of law against Ruby Tuesday because South Carolina holds that employer-employee relationships fall outside the scope of unfair trade practices statutes. Miller v. Fairfield Communities, Inc., 299 S.C. 23, 28, 382 S.E.2d 16, 20 (Ct. App. 1989). In Miller, the Court of Appeals sustained the trial court’s grant of summary judgment to the defendant against claims brought by two recently terminated employees alleging violations of SCUTPA, holding that claims arising out of an employment relationship are private matters which fall outside of SCUTPA’s scope for insufficient public interest. *Id.* See also Davenport v. Island Ford, Lincoln, Mercury, Inc., 320 S.C. 424, 465 S.E.2d 737 (Ct. App. 1995) (holding “the employer-employee relationship does not fall within the intended scope of the UTPA). Because the plaintiff’s claim against Ruby Tuesday for SCUTPA violations arises allegedly as a result of the employment relationship between decedent and Ruby Tuesday, it falls outside of the scope of the South Carolina Unfair Trade Practice Act and is also dismissed on this ground.

4. **EVEN IF RUBY TUESDAY OWED PLAINTIFF A DUTY, THE BREACH OF THAT DUTY WAS NOT THE PROXIMATE CAUSE OF PLAINTIFF’S INJURIES AS A MATTER OF LAW**

This court has concluded that Plaintiff has failed to establish that Ruby Tuesday owed a duty to Plaintiff or Plaintiff’s decedent. Assuming arguendo that such a duty was owed, this Court further finds that any breach of that duty was not the proximate cause of the Plaintiff’s injuries as a matter of law. In a negligence action, “[a] plaintiff may only recover for

injuries proximately caused by the defendant's negligence.” Hurd v. Williamsburg County, 353 S.C. 596, 611, 579 S.E.2d 136, 144 (Ct. App. 2003). The Plaintiff must prove proximate cause, which “requires proof of both causation in fact and legal cause.” Id. “Causation in fact is proved by establishing the plaintiff's injury would not have occurred ‘but for’ the defendant's negligence.” Id. Legal cause is proved by establishing foreseeability. Id. “A plaintiff therefore proves legal cause by establishing the injury in question occurred as a natural and probable consequence of the defendant's negligence.” McNair v. Rainsford, 330 S.C. 332, 349, 499 S.E.2d 488, 497 (Ct. App. 1998). “Where the injury complained of is not reasonably foreseeable, there is no liability.” Hurd, 353 S.C. at 612, 579 S.E.2d at 144. “Negligence is deemed to be the proximate cause of an injury when, without such negligence, the injury would not have occurred or could have been avoided.” Vinson v. Hartley, 324 S.C. 389, 401, 477 S.E.2d 715, 721 (Ct.App. 1996). When the evidence is only susceptible to one reasonable inference, proximate cause may be decided as a matter of law by the court. Id.

An intervening independent negligent act of a third-party implicates the issue of proximate cause. Matthews v. Porter, 239 S.C. 620, 124 S.E.2d 321 (1962). “To exculpate a negligent defendant, the intervening cause must be one which breaks the sequence or causal connection between the defendant’s negligence and the injury alleged. The superseding act must so intervene as to exclude the negligence of the defendant as one of the proximate causes of the injury.” Id. at 239 S.C. 628, 124 S.E.2d at 325. “It is a superseding cause if it so entirely supersedes the operation of the defendant’s negligence that it alone, without his negligence contributing thereto in the slightest degree, produces the injury.” Id.

Plaintiff simply cannot demonstrate that the injuries suffered would not have occurred “but for” Ruby Tuesday’s alleged failure to enforce its company policies. The plaintiff’s decedent had

not been an employee at Ruby Tuesday for over eighteen months when the sequence of events which led to her death occurred. This court finds that there is no reasonable inference adduced from the allegations in the complaint that the Plaintiff's decedent would not have suffered injuries but for the negligence of Ruby Tuesday.

Moreover, even if Plaintiff's claims could somehow survive the first prong required to establish causation, Plaintiff's Amended Complaint fails to demonstrate that the alleged damages are the reasonably foreseeable result of any acts or omissions of Ruby Tuesday. The Amended Complaint contains numerous intervening causes that Ruby Tuesday could not have anticipated as a result of its alleged negligence, including Plaintiff's decedent voluntarily moving into an apartment with her boyfriend, Defendant Harris, Defendant Harris allegedly stealing her vehicle and belongings to have sex with another woman and buy cocaine, Plaintiff's decedent deciding to walk across Rivers Avenue in North Charleston, a major road, at night, on foot, and Plaintiff's decedent being struck by a vehicle allegedly operated negligently by an individual. "One is not charged with foreseeing that which is unpredictable or which would not be expected to happen as a natural and probable consequence of the defendant's negligent act." *See Hurd*, 353 S.C. at 612-13, 579 S.E.2d at 144-45. Although this court recognizes that proximate cause is usually an issue for a jury, this court finds that the only reasonable inference that can be drawn from the allegations is that the alleged acts of Ruby Tuesday were not the proximate cause of any of the Plaintiff's injuries or damages. *See Tuten v. Joel*, 410 S.C. 104, 116, 763 S.E.2d 54, 61 (Ct. App. 2014) (holding a court may decide proximate cause as a matter of law "when the evidence is susceptible to only one inference"). Therefore, this court finds that Ruby Tuesday's alleged failure to follow its policies and procedures, assuming that created a duty, which this court previously ruled it did not, was not the proximate cause of the injuries alleged in the Amended Complaint.

**CONCLUSION**

For the reasons stated above, this Court amends its previously filed Form 4 Order and dismisses with prejudice the plaintiff's Amended Complaint against Ruby Tuesday.

AND IT IS SO ORDERED.

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The Honorable Bentley D. Price



Charleston Common Pleas

**Case Caption:** Gregory Muxlow , plaintiff, et al VS Natasha Anglin , defendant, et al  
**Case Number:** 2019CP1004193  
**Type:** Order/Other

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766