

STATE OF SOUTH CAROLINA
 COUNTY OF CHARLESTON
 IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2018-CP-10-00785

Craig Chappell,

 PLAINTIFF(S)

Ladles Soups - James Island, LLC, et al.

 DEFENDANT(S)

Submitted by: The Court	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or
	<input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other Confession of Judgment
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.
 Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

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STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

CRAIG CHAPPELL, on behalf of himself and others similarly situated,

Plaintiff(s),

v.

Ladles Soups – James Island LLC; Ladlessoups, LLC; Ladles Soups At Cane Bay LLC; Ladles Soups At Citadel Mall LLP; Ladles Soups Calhoun LLC; Ladles Soups Cane Bay LLC; Ladles Soups Coosaw LLC; Ladles Soups Downtown Charleston, LLC; Ladlessoups Fresh Fields, LLC; Ladles Soups @ Freshfields Village, LLC; Ladlessoups Mainstreet, LLC; Ladles Soups Moncks Corner LLC; Ladlessoups Mount Pleasant, LLC; Ladles Franchise Development, LLC; Ladles Franchising Inc.; Ladles Fort Mill, LLC; Ladles Knightsville LLC; Ladles West Ashley; Teri Owens; Sue Allen, Tracy Allen, Steve Traeger, Erik Dyke, Julie Dyke, Stan Sutton, Carol Sutton, Jason Dalter, Kellie Henderson; Jane Doe 1-25 (Unknown Operating Company and Management Company Owners); John Doe 25-40 (Management Personnel)

Defendants.

IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2018-CP-10-00785

ORDER ON DEFENDANTS LADLES SOUPS MOUNT PLEASANT, LLC, ERIK DYKE AND JULIE DYKE MOTION FOR SUMMARY JUDGMENT

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HEARING DATE: October 29, 2019
PLAINTIFF'S COUNSEL: Ben Le Clerq, Esq. and David D. Ashley, Esq.
DEFENDANT'S COUNSEL: P. Brandt Shelbourne, Esq.
COURT REPORTER: Joyce C. Rueger

This matter came before me on a Motion for Summary Judgment filed by Defendant Ladles Soups Mount Pleasant, LLC and its members Julie Dyke and Erik Dyke. Present for the

hearing was P. Brandt Shelbourne, Esq for the Movants, and attorneys Ben Le Clerq, Esq. and David D. Ashley, Esq. for the Plaintiff. After hearing counsels' arguments and considering the memoranda of law and evidence presented and taken in light most favorable to the Plaintiff as the non-moving party, this Court is of the opinion that Defendants Ladles Soups Mt. Pleasant, LLC and its members Julie Dyke and Erik Dyke are entitled to summary judgment as to Plaintiff's filed causes of action.

Summary Judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." Osborne v. Adams, 346 S.C. 4, 7, 550 S.E.2d 319, 321 (2001). "In determining whether any triable issues of fact exist, the evidence and all reasonable inferences therefrom must be viewed in the light most favorable to the non-moving party." Id. "When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him." Lord v. D & J Enters., Inc., 407 S.C. 544, 553, 757 S.E.2d 695, 699 (2014). ("Once the moving party carries its initial burden, the opposing party must do more than rest upon the mere allegations or denials of his pleadings, but must, by affidavit or otherwise, set forth specific facts to show that there is a genuine issue for trial." (citing Baughman v. Am. Tel. & Tel. Co., 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991))); Hall v. Fedor, 349 S.C. 169, 175, 561 S.E.2d 654, 657 (Ct. App. 2002) ("Our appellate courts have interpreted Rule 56(e) to mean materials used to support or refute a motion for summary judgment must be those which would be admissible in evidence.").

Plaintiff was an employee of Ladles Soups James Island. Plaintiff filed suit against the collective Defendants in this case to recover alleged misappropriated tips. Plaintiff's Complaint alleges a violation of the South Carolina Failure to Pay Wages Act and breach of contract and conversion. Plaintiff's Complaint proports to be brought on behalf of a class of employees of all Ladles Soups businesses, however as of the date of this hearing, no class status has been certified.

Plaintiff never worked for Ladles Soups Mt. Pleasant or for the Dykes. He has no contractual relationship with the Defendants, therefore, he has no standing to sue them. Ladles Soups Mt. Pleasant is South Carolina Limited Liability Company owned and operated by the Dykes. Both Plaintiff's employer Ladles Soups James Island and Ladles Soups Mt. Pleasant hold Ladles Soups franchises. However, Ladles Soups Mt. Pleasant is a completely separate and independent business from Ladles Soups James Island. Other than its Franchise Agreement with the overall Ladles Franchisor and its duties under that Agreement, it has no connection with the other Defendants. Plaintiff has not provided anything to show that the Agreement addresses how a Franchisee such as Ladles Mt. Pleasant is to handle tips. There is no credible evidence in the record that Ladles Mount Pleasant improperly or illegally handled its tips with regard to the Plaintiff or towards any employee for that matter.

Plaintiff, in his deposition at page 61, l. 22 – page 62, l. 6, testified as follows to the tips regarding the Defendants:

Q. As far as you know, Ladles Mount Pleasant was doing it right, as far as you know?

A. As far as I was told.

Q. Right. As far as you know?

A. Correct.

Q. And so any employees that worked for Ladles Mount Pleasant, as far as you know based on what you were told would have -- would not have any claims because they would have gotten their tips?

A. Absolutely.

Further, in his deposition Plaintiff conceded that he "didn't want to include [Ladles Mt. Pleasant] period." See Plaintiff's deposition, page 60, l. 23.

There is nothing in the record to tie the Dykes individually or Ladles Mt. Pleasant to this suit. Plaintiff can point to nothing other than speculation. Plaintiff's argument is solely that because the Ladles Soup business where Plaintiff worked allegedly failed to properly pay tips to Plaintiff, Plaintiff is entitled to sue Defendants Julie and Erik Dyke individually and their independent Ladles LLC for withholding tips. However, since this Plaintiff admits there is no evidence of wrong behavior, Defendants are entitled to summary judgment.

As to any claim that summary judgment is premature, this argument also has no merit. "A court considering summary judgment neither makes factual determinations nor considers the merits of competing testimony; however, summary judgment is completely appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner." David v. McLeod Reg'l Medical Center, 367 S.C. 242, 250, 626 S.E.2d 1, 5 (2006). While summary judgment "must not be granted until the opposing party has had a full and fair opportunity to complete discovery. Nonetheless, the nonmoving party must demonstrate the likelihood that further discovery will uncover additional relevant evidence and that the party is not merely engaged in a "fishing expedition."" Dawkins v. Fields, 354 S.C. 58, 69, 580 S.E.2d 433, 439 (2003) (quoting Baughman v. Am. Tel. & Tel. Co., 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991) (internal citation omitted). See also Guinan v. Tenet Healthsystems of Hilton Head, Inc., 677 S.E.2d 32, 383 S.C. 48 (Ct. App. 2009). "A party claiming summary judgment is premature because they have not been provided a full and fair opportunity to conduct discovery must advance a good reason why the time was insufficient under the facts of the case, and why

further discovery would uncover additional relevant evidence and create a genuine issue of material fact.” Guinan v. Tenet Healthsystems of Hilton Head, Inc., 383 S.C. at ___, 677 S.E.2d at 36 citing Dawkins, 354 S.C. at 71, 580 S.E.2d at 439-40. Plaintiff has not provided any support for such argument.

Plaintiff filed suit on February 14, 2018 against the Dykes and Ladles Mt. Pleasant. Defendants timely answered the Complaint on June 14, 2018 and filed the answer with the Clerk on June 20, 2018. Plaintiff did not serve any discovery on Defendants until May 24, 2019, over fifteen (15) months after he filed suit and eleven (11) months after Defendants answered Plaintiff’s Complaint. Plaintiff cannot now claim that he has not had ample opportunity for discovery. He has not enunciated any legitimate reason why in the eleven (11) months since Defendants answered the Complaint, he has not had time to complete or conduct adequate discovery or that any further discovery would uncover additional relevant evidence or create a genuine issue of material fact as to the suit between Plaintiff and these Defendants.

Based upon the absence of any material fact or inference arising therefrom that supports Plaintiff’s causes of action against Defendants Ladles Soups Mt. Pleasant, LLC and Julie Dyke and Erik Dyke, and based upon the fact that the Plaintiff has had adequate time to conduct discovery and has not provided any rationale why it has not had adequate time, nor argued what additional evidence would create a genuine issue of material fact between Plaintiff and these Defendants, the Defendants are entitled to Summary Judgment.

And it is so
ORDERED!

Bentley Price
Presiding Judge, Ninth Judicial Circuit

December __, 2019
Charleston, South Carolina



Charleston Common Pleas

Case Caption: Craig Chappell VS Ladles Soups James-Island LLC , defendant, et al
Case Number: 2018CP1000785
Type: Order/Summary Judgment

IT IS SO ORDERED!

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