

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS

FOR THE NINTH JUDICIAL CIRCUIT

CRAIG CHAPPELL, on behalf of himself)
And others similarly situated,)

Plaintiff(s),)

v.)

Ladles Soup – James Island, LLC; Ladles)
Soup at Cane Bay LLC; Ladles Soups at)
Citadel 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,)
Jack Dalter, Kellie Henderson; Jane Doe)
1-25 (Unknown Operating Company and)
Management Company Owners); John Doe)
25-40 (Management Personnel),)
Defendants.)

CASE NO.: 2018-CP-10-00785

ORDER GRANTING
SUMMARY JUDGMENT
AS TO CERTAIN DEFENDANTS

RECEIVED

MAR 27 2020

SC Court of Appeals

HEARING DATE: January 6, 2020

PLAINTIFF'S COUNSEL: Ben Le Clerq, Esq. and David D. Ashley, Esq.

DEFENDANT'S COUNSEL: Paul B. Ferrara, III, Esq.

COURT REPORTER: Joyce C. Ruger

This matter came before me on a motion for summary judgment filed by Defendants Ladles Soups Freshfields, LLC, et. al. Present for the hearing was Paul B. Ferrara, III, Esq for the Movants and attorneys Ben Le Clerq, Esq. and David D. Ashley, Esq. for the Plaintiff. After reviewing the filed pleadings, affidavits, hearing counsels' arguments, considering the memoranda of law and evidence presented in this matter, taken in the light most favorable to the Plaintiff as the non-moving party, this Court is of the opinion that Defendants Ladles Soups Freshfields et. al are entitled to summary judgment as to Plaintiff's filed causes of action.

In this action, 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, breach of contract, and conversion.

It is an undisputed fact that Plaintiff was an employee of Ladles Soups James Island, LLC only. Further, there is no dispute that Mr. Chappell did not work or was ever employed by any other Ladles Soups store, other than Ladles James Island, LLC. Further, as established by the unchallenged filed affidavit of Sue E. Allen each Ladles is independently owned and operated. Further, it is undisputed that Plaintiff has no contractual relationship with any Defendants except Ladles James Island, LLC.

It is clear that the Plaintiff must have standing or an injury-in fact to be able to maintain an action against a Defendant. "Standing to sue is a fundamental requirement in instituting an

action.” Bodman v. State, 403 S.C. 60, 66, 742 S.E.2d 363, 366 (2013) (quoting Joytime Distributions & Amusement Co. v. State, 338 S.C. 634, 639; 528 S.E.2d 647, 649 (1999)). The party seeking to establish standing has the burden of proving it. Town of Arcadia Lakes v. S.C. Dep’t of Health & Env’tl. Control, 404 S.C. 515, 529, 745 S.E.2d 385, 392 (Ct. App. 2013). Further, “[a]t the pleading stage, general factual allegations of injury resulting from the defendant’s conduct may suffice to withstand a motion to dismiss.” *Id.* (quoting Lujan, 504 U.S. at 561); however, standing must be proven “with the manner and degree of evidence required at the successive stage of the litigation.” *Id.*; see also Beaufort County v. Trask, 349 S.C. 522, 563 S.E.2d 660 (Ct. App. 2002) (affirmed trial court’s determination that County’s failure to prove allegations supporting standing at the merits hearing ultimately defeated County’s claim to standing).

In South Carolina standing may be acquired by any one of the three methods: (1) by statute; (2) establishing a case-or-controversy under the Lujan factors (See Lujan v. Defenders of Wildlife, 504 U.S. 555 (1992)); or (3) under the public importance exception. See Bodman, 403 S.C. at 66- 65. Importantly, unlike the federal law of standing, which is rooted in the Constitution’s ‘case or controversy’ requirement, standing in our South Carolina state courts is not normally viewed as a constitutional doctrine. See ATC South, Inc. v. Charleston County, 380 S.C. 191, 669 S.E.2d 337 (2008). Additionally, it is important to note that if a statutory standing exists, the Lujan factors are inapplicable. See Freemantle v. Preston, 398 S.C. 186, 194 (2012). However, when no statute confers standing, the elements of constitutional standing must be met by the Plaintiff and it is his burden to establish his right to maintain action.

The U.S. Supreme Court, as established in Lujan, has held that the “irreducible constitutional minimum of standing” consists of three elements: First, the plaintiff must have

suffered an “injury in fact”—an invasion of a legally protected interest which is (a) concrete and particularized and (b) “actual or imminent, not ‘conjectural’ or ‘hypothetical.’” Second, there must be a causal connection between the injury and the conduct complained of—the injury has to be “fairly . . . trace[able] to the challenged action of the defendant, and not . . . th[e] result [of] the independent action of some third party not before the court.” Third, it must be “likely,” as opposed to merely “speculative,” that the injury will be “redressed by a favorable decision.” *Lujan*, 504 U.S. at 560-561 (citations omitted). It is critical that a party meet all three elements to establish that the party’s case is a justiciable case or controversy. Absent this showing, the federal court’s jurisdiction under Article III of the U.S. Constitution cannot be invoked. For this reason, a showing by a defendant that the plaintiff does not have standing to pursue his case in federal court, i.e., he has not properly invoked the jurisdiction of the federal court, deprives the federal court of the judicial power to hear the case.

The South Carolina Supreme Court adopted the three-part test of *Lujan in Sea Pines Ass’n for Protection of Wildlife, Inc. v. S.C. Department of Natural Resources*, 345 S.C. 594, 550 S.E.2d 287 (2001) and since 2001 has generally analyzed standing by applying various tests, including the *Lujan* test, often referring to it as the “constitutional standing” test. See, e.g., *Smiley v. S.C. Dep’t of Health & Envtl. Control*, 374 S.C. 326, 649 S.E.2d 31 (2007) (held *Smiley* sufficiently alleged standing under the elements of the *Lujan* test); *Charleston Trident Home Builders, Inc. v. Town Council of Summerville*, 369 S.C. 498, 632 S.E.2d 864 (2006) (held *Trident* had standing under the elements articulated in *Sea Pines*); see also *St. Andrews Pub. Serv. Dist. v. City Council of Charleston*, 349 S.C. 602, 564 S.E.2d 647 (2002) (held special purpose district lacked statutory standing to challenge annexation); *Powell ex rel. Kelley v. Bank of America*, 379 S.C. 437, 665 S.E.2d 237 (Ct. App. 2008) (held *Bank* lacked standing according

to the Lujan test); Commander Health Care Facilities, Inc. v. S.C. Dep't of Health & Envtl. Control, 370 S.C. 296, 634 S.E.2d 664 (Ct. App. 2006) (held Commander lacked standing according to the Lujan test); Sloan v. Greenville County, 356 S.C. 531, 590 S.E.2d 338 (Ct. App. 2003) (held Sloan, as a taxpayer, had standing under the Lujan test and also because the issue was of sufficient public importance).

The record establishes that Plaintiff only has statutory standing with Ladles James Island, LLC. Here, Plaintiff, in his deposition, stated:

Q: "Did you ever receive a paycheck from any organization, company, LLC, or incorporated entity connected with Ladles other than Ladles - James Island?

A No." (Deposition of Craig Chappell page 81, LL. 2-5)

Given the above, the plaintiff only has standing, or an injury-in-fact, as to assert his claims against Ladles James Island, LLC as he was only ever employed by Ladles James Island, LLC. S.C. Code Ann. 41-10-10 et. seq. requires an employer/employee relationship to maintain a claim. The employer/employee relationship exists only between Plaintiff and Ladles James Island, LLC. As such, Mr. Chappell has statutory standing against Ladles James Island, LLC only. Standing under Lujan factors are inapplicable to all other Defendants. Moreover, the records do not contain a basis for the public importance exception to establish standing in this action.

Plaintiff's counsel asserted numerous times, at the hearing on this matter, that summary judgment should be denied as Plaintiff had not had a fair opportunity to complete discovery. However, this argument is without merit based upon the law. "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). 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 and additional discovery will nevertheless not create standing for the Plaintiff.

Summary judgment is hereby granted as to Defendants Ladles Soups Downtown Charleston, LLC, Ladles Soups Fresh Fields, LLC, Ladles Soup @ Freshfields Village, LLC, Ladles Soups Moncks Corner, LLC, Ladles Fort Mill, LLC, Ladles West Ashley, Steven Traeger, Kelly Henderson, Dan Sutton, and Carol Sutton, Teri Owens, Ladles Soups Coosaw, LLC, and Ladles Knightsville, LLC.

The plaintiff only has standing to assert his claims against Ladles James Island, LLC as that is the only place he was ever employed. Therefore, the claims for failure to pay wages, breach of contract and conversion survive only as Defendant Ladles James Island, LLC.

And it is so ORDERED!

Bentley Price

Presiding Judge, Ninth Judicial Circuit

February __, 2020

Charleston, South Carolina



Charleston Common Pleas

Case Caption: Craig Chappell VS Ladles Soups James Island LLC , defendant, et al
Case Number: 2018CP1000785
Type: Order/Form 4

IT IS SO ORDERED!

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

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