THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Bentley Price, Circuit Court Judge

Appellate Case No. 2020-000129

RECEIVED
JUN 17 2020
SC Court of Appeals

Gregory Muxlow, individually
and as Personal Representative
for the Estate of Jennifer
Muxlow..Appellant,

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,

Of whom Ruby Tuesday, KC Mulligan's, ARIUM St. Ives, and
Carroll Management Group are the ....Respondents.

REPLY BRIEF (TO KC MULLIGAN'S) OF APPELLANT

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REPLY TO RESPONDENT'S ARGUMENTS

I. The Circuit Court erred in dismissing KC Mulligan's because the appellant stated and sufficiently pled causes of action for which she may recover against the respondent.

"Generally, in considering a 12(b)(6) motion, the court must base its ruling solely upon allegations set forth on the face of the complaint." *Baird v. Charleston County*, 713 S.E.2d 604 (2011); *Doe v. Greenville County Sch. Dist.*, 651 S.E.2d 305, 307 (2007). "The 12(b)(6) motion may not be sustained if the facts alleged and inferences therefrom would entitle the plaintiff to any relief on any theory." *Stiles v. Onorato,* 318 S.C. 297, 457 S.E.2d 601 (1995); *Toussaint v. Ham*, 292 S.C. 415, 357 S.E.2d 8 (1987); *Dye v. Gainey,* 320 S.C. 65, 463 S.E.2d 97 (Ct. App.1995); *Brown v. Leverette*, 353 S.E.2d 697 (1987); *Blandon v. Coleman*, 285 S.C. 472, 330 S.E.2d 298 (1985); and *Glass v. Glass*, 276 S.C. 625, 281 S.E.2d 221 (1981).

In this case, the appellant sufficiently pled causes of action against KC Mulligan's. Put simply, if the court accepts what the appellant alleged in his complaint as true, then the appellant is entitled to recover as to KC Mulligan's. The appellant alleged that KC Mulligan's lied to the decedent about Harris' whereabouts; that this lie caused the decedent to continue to search for her car, wallet, and debit card; and that, as a result of this lie and continued frantic search, the decedent was struck by a car. These allegations, if taken as true, would entitle the appellant to "any relief on any theory." *Stiles v. Onorato,* 318 S.C. 297, 457 S.E.2d 601 (1995). As a result, the Circuit Court should have denied KC Mulligan's motion to dismiss.

In its brief, KC Mulligan's argues that it did not owe a duty to the decedent because, "on the night of the decedent's death, she was neither a patron, or an expected patron, or any other type person that the Respondent, KC Mulligan's would or could have anticipated of owing a duty." While the respondent may not have had an affirmative duty to act, once it undertook to act, it had a duty to act

reasonably. In South Carolina, "negligence is defined in the law as the absence of due care. The want or lack of due care or ordinary care. The word carelessness conveys the same idea as negligence." *See* Ralph King Anderson, Jr., *South Carolina Requests to Charge – Civil* §20-1 (2002).

In lying to the decedent, KC Mulligan's not only acted, but acted with carelessness. KC Mulligan's intentionally misled a distraught young woman, who it knew was frantically searching for Harris, who had her car, wallet, and debit card. As a result of KC Mulligan's actions, the decedent suffered a harm that could have been "avoided by the defendant's exercise of reasonable care." *Snow v. City of Columbia*, 305 S.C. 544, 409 S.E.2d 797 (Ct. App. 1991). Had KC Mulligan's not lied to the decedent, the decedent would not have continued to look for Harris on foot. It was during that continued search that the decedent was struck by a vehicle and killed. To hold that KC Mulligan's can knowingly lie to a distraught woman frantically searching a city for her mode of transportation, identification, payment and completely escape liability for the damage that the lie caused smacks of inequity and is at odds with jurisprudence in general. The Court need not consider the injustice on these grander scales, however, as the holding is also at odds with Rules 8 and 12 of SCRCP, as stated in the appellant's initial brief, and with the cases cited above.

In its initial brief, KC Mulligan's asserts that it is "preposterous that one could try to impose a duty upon an establishment for providing them with information that no reasonable person could ever anticipate would result in the factual basis of the Complaint." This is essentially an argument that there is no causal link between KC Mulligan's actions and the decedent's death. However, as our Courts have said time and time again, proximate cause is a jury question. In *Wilson v. Marshall*, 195 S.E.2d 610 (1973), the Court noted that, "[q]uestions of negligence, proximate cause and contributory negligence are ordinarily questions of fact for the jury [...]." When there is a difference of opinion as to "whose acts produced or contributed to the injury complained of as a direct and proximate

cause, questions of negligence, proximate cause and contributory negligence should be submitted to the jury." *Id.* As a result, the question of whether KC Mulligan's proximately caused the decedent's injuries should be submitted to the jury.

CONCLUSION

For the foregoing reasons, the appellant respectfully requests that the Appellate Court reverse the Circuit Court's ruling.[1]

Respectfully submitted,

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June 15, 2020

[1] Since the appellant has stated a claim exceeding twenty dollars, dismissal of his claims has deprived him of his constitutional right to a jury trial guaranteed by the Seventh Amendment of the United States Constitution and by the South Carolina Constitution.

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Of whom Ruby Tuesday, KC Mulligan's, ARIUM St. Ives, and
Carroll Management Group are the ....Respondents.

PROOF OF SERVICE

I certify that I have served the Initial Reply Brief (to Respondent KC Mulligan's) of the Appellant, by depositing copies of it in the United States Mail, postage prepaid, on June 15, 2020, addressed to its attorneys of record: Christopher Lizzi at 2170 Ashley Phosphate Road, Suite 402, North Charleston, SC 29406; Catharine Griffin at P.O. Box 8057, Columbia, SC 29202; and Jack Gresh and Elizabeth Fulton Morrison at 111 Coleman Boulevard, Suite 301, Mount Pleasant, SC 29464.

June 15, 2020
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Via U.S. Mail and electronic mail to: ctappfilings@sccourts.org
Ms. Jenny Abbot Kitchings
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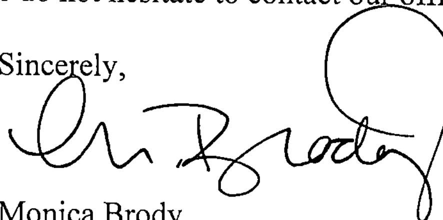
Re: *Gregory Muxlow v. Ruby Tuesday, KC Mulligan's, St. Ive's and Carroll Management Group*
Appellate Case No. 2020-000129

Dear Ms. Kitchings:

Please find enclosed for filing The Initial Reply Brief of Appellant (to KC Mulligan's) in the above-mentioned matter. By copy of this letter, we are serving counsel for the respondents.

Should you have any questions, please do not hesitate to contact our office.

Sincerely,



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